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**Single-Discussion Procedure:  
PRELIMINARY REPORT**

International Labour Conference

TWENTY-SIXTH SESSION  
GENEVA, 1940

**THE ORGANISATION  
OF LABOUR INSPECTION  
IN INDUSTRIAL  
AND COMMERCIAL UNDERTAKINGS**

First Item on the Agenda

**INTERNATIONAL LABOUR OFFICE  
GENEVA, 1939**

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## INTRODUCTORY NOTE

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At its Eighty-sixth Session (February 1939) the Governing Body of the International Labour Office decided to place on the agenda of the Twenty-sixth Session of the International Labour Conference (1940) the question of the organisation of labour inspection. It further decided that the question should be dealt with in accordance with the single-discussion procedure, with consultation of the Governments

Under Article 6 (5) of the Standing Orders of the Conference, the Office is required in such a case to "circulate to the Governments a summary report upon the question containing a statement of the law and practice in the different countries and accompanied by a Questionnaire drawn up with a view to the preparation of Draft Conventions or Recommendations" The present document is intended to comply with this requirement. It contains in Part I a comparative analysis of national laws and regulations on the organisation and working of labour inspection in industrial and commercial undertakings, preceded by a general introduction embodying an historical outline of labour inspection in the different countries and an account of the steps taken to deal with the subject on an international footing, more particularly by the International Labour Organisation, and, in Part II, the conclusions reached by the Office as to the possible bases for international regulation of the question, the report of the Preparatory Technical Conference, which met in Geneva from 29 May to 2 June 1939, to consider 'the general principles for the organisation of systems of inspection carried out in industrial undertakings (excluding mining and transport undertakings) and commercial undertakings, in order to secure the enforcement of legal provisions relating to conditions of work and the protection of the workers while engaged in their work', and a Questionnaire drawn up by the Office in the light of the report of the Preparatory Technical Conference



Governments are invited to communicate to the Office their replies to the above-mentioned Questionnaire. In the light of their replies the Office will, in accordance with the provisions of Article 6 (6) of the Standing Orders of the International Labour Conference, prepare a final report (Blue Report) containing the texts of one or more Draft Conventions and one or more Recommendations to be submitted to the Conference as a basis for discussion in 1940.

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## GENERAL INTRODUCTION

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### § 1. — A Historical Outline of Labour Inspection

#### THE ORIGINS AND DEVELOPMENT OF FACTORY INSPECTION

The necessity, in a modern industrial community, of an adequate system of labour inspection is now so universally recognised as to appear almost self-evident, but years of discussion and experiment preceded the introduction of such a system, even in a rudimentary form, in the various pioneer industrial countries.

There were two distinct features of modern factory work which forced themselves upon the attention of the national legislatures, as implying a need for protective legislation. In the first place, the new mechanical processes made it possible and profitable to employ large numbers of children and women at the machines, and it became evident that the physique and cultural level of the community as a whole would suffer unless steps were taken to protect these weaker members against the worst effects of overwork. Secondly, it was soon discovered that work under factory conditions involved special dangers to the health and safety of all factory operatives, and not merely to women and juveniles (though the risks involved for these latter groups were particularly grave); so that it was necessary to impose special regulations in respect of health and safety in the factories, quite apart from the general provisions contained in public health legislation.

The very earliest attempts to regulate factory conditions were made within the atmosphere, as it were, of the old corporative system. Thus, in Austria and Great Britain the first factory laws aimed at the protection of "apprentices" (*Allerhöchstes Handbillet* of 20 November 1786, *Hofkanzleidekret* of 18 February 1787; Health and Morals of Apprentices Act, 1802). But the problem could not be solved within the framework of the old economic system, and in most countries the earliest factory laws were based on a recognition of the fact that the relation of the child workers to the occupiers of the factories in which they were employed (in many cases not by



the occupier himself but by the adult workers) was no longer comparable to that previously existing between an apprentice and his master

In order to make clear the nature and importance of the problems that presented themselves with regard to the enforcement of the new factory legislation, it may be useful to recapitulate some of the outstanding characteristics of such legislation

(1) Unlike the old laws on the corporations and guilds it aimed primarily, not at the protection of the particular trades, with due regard for the interests of the community as a whole, but at the protection of a particular group of employed persons. Experience was to prove that such protection would, in the long run, confer direct and positive benefits on the trades themselves, but, in the absence of experience and scientific knowledge in regard to factory work and its effects on the workers' health, this result was not at first foreseen. Most employers were honestly convinced that the prosperity of their undertakings was necessarily proportionate to the intensity with which the labour force at their disposal was exploited, and eminent economists were at hand to demonstrate to them, with an impressive array of statistics, that, where a twelve-hour day was worked, the whole profit was derived from the work performed during the twelfth hour

(2) The new legislation constituted a direct interference on the part of the State in the contractual relations between two supposedly free agents. It thus flouted the prevailing economic doctrine, according to which commercial prosperity depended upon the fullest possible freedom of trade and industry

(3) It dealt with conditions *inside* industrial premises (where the occupier felt morally entitled to behave with the same freedom as inside his own home) and which could only be investigated by intrusion upon the occupier's property

(4) It frequently dealt with subjects in respect of which control was very difficult, the age of children (at a time when birth certificates were non-existent), their education (before systems of free public education had been instituted), their morals and the conditions under which they were employed, not by the occupier, but, in many cases, by adult workers (perhaps their own fathers).

(5) The early factory legislation aimed at the protection of a particularly defenceless group of wage earners, who could rely for help neither on trade union action nor on an organised and informed public opinion. In the words of the Commission which, in Great Britain, drafted the proposals for the creation of a system of factory inspection that were subsequently embodied in the 1833 Factory Act, such measures "relate solely to the children, and are not directly conducive to the immediate interests either of the master manufacturers, or of the operatives, or of any powerful class, and are not therefore likely to receive continuous voluntary support"<sup>1</sup>

It is clear, in the light of these considerations, that the problem of securing adequate enforcement of factory legislation was bound to be one of great difficulty, and that it could not have been solved by recourse to any of the previously existing methods for securing law observance. The methods that were first tried may be passed rapidly in review.

In Austria recourse was had to the local police authority, the district medical officer, the inspectors of schools and the clergy. In Great Britain reliance was placed partly on voluntary visitors, appointed by the local justices of the peace (one clergyman and one justice of the peace for each district), and partly on the rewarding of informers by a half-share of the fines inflicted. In France responsibility for inspection was confided successively to unpaid local committees, to the inspectors of elementary schools, to the inspectors of weights and measures, and to the inspectors of mines. In Prussia the local police authorities (assisted by the education authorities and, in some districts, by local committees consisting e.g. of the burgomaster, a medical practitioner, a clergyman, a schoolmaster, and local manufacturers) were made responsible for securing enforcement of the factory legislation. In the Canton of Zurich various existing officials (particularly the inspectors of schools) were utilised. In Italy the task of inspecting factories for the purpose of securing compliance with the provisions of protective legislation was added to those incumbent upon various previously existing officials: inspectors of mines, inspectors of industry and industrial education,

<sup>1</sup> "First Report of the Central Board of His Majesty's Commissioners appointed to collect Information in the Manufacturing Districts, as to the Employment of Children in Factories and as to the Propriety and Means of Curtailing the Hours of their Labour" (1833), p. 68.

Gôvernment civil engineers, agents of accident prevention or insurance institutions, etc , as well as the prefects, municipal authorities and the local police. In the Netherlands the municipalities were held responsible. In Massachusetts recourse was had successively to the school attendance officers and the district police.

It may be affirmed roundly, without fear of refutation, that every one of these methods failed completely to secure adequate enforcement of the relevant legislation.

This failure may be attributed in each respective case to one or more of the following reasons: lack of capacity, authority or independence on the part of the officials responsible for inspection, failure to confer adequate powers on the inspecting officials, the fact that the officials designated were already fully absorbed by other duties, failure to offer sufficient inducement (remuneration) to the inspectors; lack of supervision by a competent central authority.

It was in Great Britain that the necessity for a thorough reform in the machinery of enforcement was first recognised and faced. The Royal Commission which was appointed in 1833 "to collect information in the manufacturing districts, as to the employment of children in factories, and as to the propriety and means of curtailing the hours of their labour" found that the existing legislation "has been almost entirely inoperative with regard to the legitimate objects contemplated by it, and has only had the semblance of efficiency under circumstances in which it conformed to the state of things already in existence, or in which that part of its provisions which are adopted in some places would have been equally adopted without legislative interference."

Two alternative solutions were suggested to the Commissioners. The workers, who were mainly interested in securing a general limitation of hours of work through the restrictions placed on the employment of children, and a number of employers, who recognised the desirability of limiting hours of work but wished the limitation to involve the least possible interference by outside authorities in the conduct of their undertakings, proposed that a general restriction should be placed on the hours during which the machines might be allowed to run. The Commissioners perceived, however, that the problem was not merely one of limiting hours of work, and therefore rejected this proposal. The alternative sug-

gestion, put before the Commissioners by "several eminent manufacturers" and indeed "urged from all parts of the country" was for the appointment of officers charged with the powers and duties requisite to enforce the execution of the relevant legislative measures. It was this solution which the Commissioners decided to recommend, and, as a result, a system of factory inspection was instituted by the Factory Act of 1833 (Lord Althorp's Act). Four inspectors were appointed, each responsible to the Home Secretary for the enforcement of the law in his own district, and assisted by a certain number of "superintendents" (sub-inspectors). They were at first given the full judicial powers of a justice of the peace (including the power to inflict penalties direct), as well as power to make binding rules, regulations and orders for the execution of the Act, but the maintenance of these powers was found to be unnecessary, and even embarrassing, and they were withdrawn in 1844. The course of events was to show that, from the date of the creation of a special factory inspectorate, adequately staffed and armed with the necessary powers of entry and investigation, the essential problem of the enforcement of factory legislation had been solved. Difficulties of all kinds might and did arise, and various administrative reforms were from time to time necessary, but never again could it have been asserted that factory legislation was "almost entirely inoperative."

The results of the British experiment were followed with interest in the other countries which were in a similar stage of industrial evolution, and they were so evidently satisfactory that one State after another set up similar systems of specialised factory inspection. The following chronological table will give a rough idea of the gradual geographic extension of such systems (the dates refer, generally speaking, to the enactment of the necessary legislation — in a few cases the available information is not sufficient to justify the assertion that the legislation came promptly into force).

1833 Great Britain	1873 Denmark	1883 Austria
and Ireland	1874 France	1885 Victoria
1853 Prussia	1877 Switzerland	1885 Wisconsin
1859 Zurich	(Confederation)	1886 New York
1862 Aargau		1888 Ontario
1864 Glarus	1878 Germany	1888 Quebec
1871 Basle (town)	(Reich)	1889 Belgium
1872 Saxony	1882 Russia	1889 Netherlands

1889 Finland	1910 Serbia	1924 Bohemia
1889 Pennsylvania	1911 India <sup>1</sup>	1926 Ecuador
1889 Sweden	1912 Argentina	1926 Guatemala
1891 New Zealand	1912 Greece	1927 Turkey
1892 Norway	1912 Massachusetts <sup>2</sup>	1929 China
1893 Hungary	1913 Uruguay	1930 Egypt
1893 Portugal	1915 Japan	1930 Dominican Republic
1896 New South Wales	1918 Union of South Africa	1931 Mexico (Confederation)
1896 Queensland	1919 Chile	1932 Brazil (Confederation)
1902 Luxemburg	1920 Peru	
1905 Bulgaria	1921 Brazil (Federal capital)	1933 Cuba
1906 Italy	1923 Colombia	1936 Venezuela
1906 Rumania	1923 Panama	
1907 Spain		

Thus, speaking very generally, it is clear that by the end of the last century a system of specialised factory inspection had been created in practically all the pioneer industrial countries (Western and Northern Europe, the United States of America, and the British Dominions), that this example was followed during the first two decades of the present century by various countries of Southern and Eastern Europe and Asia, and that in the latest period the institution of factory inspection has spread rapidly among the Latin-American Republics, and has been inaugurated in Turkey, in China and in Egypt

#### TECHNICAL INSPECTION

As has already been explained, the necessity for specialised factory inspection forced itself upon the legislatures, because it was seen to be the only means of solving two problems brought into existence by the new factory system—the problem of protecting the weaker industrial groups (juveniles and women) against overwork, and the problem of safeguarding the health and safety of the whole mass of industrial workers.

In the early days of factory inspection it was the former of these two problems which appeared the more urgent, and in many ways the more difficult. The idea of limiting hours of work, even for women and juveniles, was a new one, and its necessity, in the interests of all concerned, had not been so clearly demonstrated as to command general assent.

<sup>1</sup> A special inspectorate had been created in the Province of Bombay in 1883, but was abolished in 1887

<sup>2</sup> A special factory inspectorate had previously existed as a branch of the police administration

Moreover, the adequate protection of children and young persons was far more difficult at a time where the compulsory registration of births and free compulsory schooling were unknown, or in their infancy. Consequently it appeared less important that the inspectors should have technical (and particularly engineering) qualifications than that they should possess independence and authority.

In course of time, however, the enforcement of those protective provisions which deal with such non-technical questions as hours of work, rest periods, holidays and minimum age has become progressively simpler (except, of course, in a constantly diminishing minority of countries where the administrative and judicial services have not yet attained the normal modern level of independence and efficiency). On the other hand, problems of health and safety have steadily assumed greater importance and complexity.

(It is interesting to note, in passing, that in the case of mines inspection the centre of gravity always lay on the technical side, and that, although the first real *factory* inspectorate was that created in Great Britain in 1833, a modern *mining* inspectorate had existed in France since 1810. The French inspectorate of mines shares with the British factory inspectorate the honour of laying the first foundations of modern labour inspection.)

As will be seen from subsequent sections of the present Report, this gradual shifting of emphasis has led to different administrative consequences in different countries. In some cases it has been found convenient to create one or more subordinate categories of inspectors (without university degrees or special technical qualifications) to inspect with regard to such matters as hours of work and minimum age, thus freeing the technically qualified inspectors to concentrate their attention on health and safety problems. In other cases inspection in respect of health and safety has partly or wholly devolved upon the agents of insurance institutions (this has been the case particularly in regard to boiler inspection, which is a highly specialised branch of inspection work and which it is difficult to combine with other branches of inspection work, if only for the reason that it cannot be carried out without giving the occupier previous notice of an impending visit). In yet other cases the inspectors of mines have been made responsible for the inspection of factory

machinery. The association of various classes of technical experts — medical practitioners, engineers, chemists, electrical engineers, architects, etc — either as regular members of the staff or as outside consultants has also been gradually extended in various forms

### FACTORY INSPECTION AND LABOUR INSPECTION

The earliest enactments in the field of protective labour legislation (apart from mines legislation) applied to labour in factories, and the inspectors responsible for their enforcement were thus in the strict sense factory inspectors. As, however, such protective legislation has in the course of time spread progressively so as to cover other fields of economic activity, and as it has been developed so as to protect the worker in all the aspects of his social situation, and not merely in respect of the material and physical conditions under which his work has to be performed, the notion of "factory inspection" has become enlarged into that of "labour inspection"

In the first place, the scope of legislation has been extended to cover, not merely factories, but all industrial undertakings, including both the small workshops and undertakings where work is carried on under factory conditions, but is not directly concerned with manufacture or production (laundries, docks, warehouses, etc)

Secondly, legislation, and consequently inspection, has been extended to other branches of economic activity (commerce and distribution, agriculture, transport, etc)

Thirdly, new legislation, involving new and complicated problems of inspection and administration, has been passed with regard both to conditions of work not covered by the earlier enactments (particularly wages) and to such subjects as social insurance, placement, migration and vocational training

Various administrative solutions have been devised for the resulting problems, involving a greater or less degree of centralisation. At one end of the scale stands Great Britain, where the factory inspectorate is still what its name implies (though the definition of what constitutes a factory is now a comprehensive one), and where other inspectorates, attached to other Government departments or to the local administrative authorities, have been set up from time to time for

the enforcement of legislation additional to the Factories Act (Trade Boards Inspectorate, special inspectorates attached to the Ministries of Agriculture and Transport and to the Board of Trade, local shops inspectors, etc.) At the other end stands Poland, where a single inspectorate is competent for all branches of labour inspection. Between these two extremes stands the great majority of countries, where a certain amount of grouping has been found desirable (so that outside Great Britain the term "factory inspection", if used at all, usually has connotations considerably wider than the term "factory" would imply), but where separate inspectorates are frequently maintained for such branches as mining, transport and agriculture.

#### INSPECTION AND ADMINISTRATION

In discussing questions relating to labour inspection, some confusion is liable to arise because in a number of countries the duties incumbent — whether *de jure* or *de facto* — upon the inspector have been extended considerably beyond the mere carrying out of visits of inspection (together with the administrative work to which such visits necessarily give rise).

From the beginning it was clear that the inspector's role was something considerably more important and delicate than that of a kind of specialised police official. In many countries an attempt was made to secure enforcement of factory legislation by the police before the creation of a special factory inspectorate, and in practically every case such attempts broke down. Factory legislation was too new, and rapidly became too complicated, to be adequately enforced by an officer without technical qualifications, to whom the normal method of procedure was to watch for contraventions and automatically to set the penal procedure in motion whenever he discovered them. The role of the factory inspector was rather to win the confidence of employers and employed by the exercise of tact and technical competence, backed by firmness and independence; and when he had succeeded in this preliminary task he could obtain far more by persuasion than he could have hoped to do by mere threats. At the same time, through the knowledge and experience that he acquired, he was able to make a most valuable contribution towards the preparation of fresh legislation.

The distinction between the respective functions of a



factory inspector and a police official is expressed with extreme logic in the factory inspection regulations for the German Reich, issued by the Federal Council in 1878 " The officials to be appointed will not replace the regular police authorities in the sphere of action assigned to them, but will attempt, by supplementing their work and by giving expert advice to the competent higher administrative authorities, to secure that the provisions of the Industrial Code and the regulations issued in pursuance of it are suitably and uniformly applied in the districts allocated to them, by means of supervision, advice and mediation proffered in a spirit of good will, not only to ensure that the workers enjoy the benefits of legal protection, but also tactfully to assist the employers to comply with the requirements of the law as regards the equipment and working of their undertakings, with the help of their technical knowledge and administrative experience, to hold the balance between the interests of the employers on the one hand and those of the workers and the public on the other, and to try to gain the confidence of employers and workers alike, so as to be able to assist in establishing and maintaining good relations between the two parties " It was entirely in harmony with this conception that the Prussian inspectors, and later on all the German inspectors, should have received the title, not of " factory inspector ", but of " industrial counsellor " (*Gewerberat*)

The Act of 17 June 1883, by which a system of factory inspection was instituted in the Austrian Empire, contains a passage which is practically a literal transcription of the passage quoted above from the German regulations

Such definitions of the inspector's principal functions foreshadow a development which has assumed increasing prominence in a number of countries The inspector was to be, not a policeman, but an expert adviser, a confidential friend, and a conciliation agent, whose good offices were to be constantly at the disposal of employers and workers alike It is not surprising that advantage should have been taken by both parties of the possibility thus offered to them, and that — sometimes in virtue of specific legislation and sometimes through sheer force of circumstances — the factory or labour inspector should in a number of countries have been gradually brought into a position where industrial conciliation constitutes one of his main duties

Moreover, in more recent years and particularly since the end of the world war, it has been found convenient in some countries — particularly countries of relatively sparse population and in which the public administrative services are not yet fully developed — to utilise the labour inspection services for the performance of various duties arising out of new labour and industrial legislation : registration of trade unions and associations, placement, the granting of various permits, control of immigration, etc

That such important new duties should be entrusted to a labour inspectorate testifies to the place and the reputation that the inspectors have deservedly won in the modern industrial community, but there is a real danger in such cases lest the original and essential function of the labour inspector — to carry out visits of inspection with the frequency and thoroughness necessary to secure adequate enforcement of protective labour legislation — be overlooked or thrust on one side. Moreover, serious questions of compatibility may arise thus, where an inspector has to act simultaneously as an industrial conciliator, he may be tempted to carry out his enforcement duties with some laxity in order to win the employers' good will, or he may find that, where he has sided with one of the parties to a dispute, the other party will tend to withhold its confidence and collaboration from him in his capacity as inspector. It is no doubt for these reasons that many countries have preferred to appoint special officials, independent of the inspection services, to perform duties in respect of industrial conciliation.

#### THE ENFORCEMENT OF ARBITRATION AWARDS AND COLLECTIVE AGREEMENTS

In course of time, not merely has the scope of protective labour legislation been extended ; its very nature has, in a number of countries, undergone an important transformation. In such countries, the legal rights of the workers, in respect of their conditions of work, are derived not merely from statute law but also, and to an ever-increasing extent, from collective agreements or arbitration awards upon which the legislation confers binding force.

The national legislatures, in giving force of law to such agreements and awards, have naturally not neglected to take

steps to ensure their enforcement. In most cases the factory or labour inspectorate has been utilised for this purpose. Thus, in the various Australian States, in New Zealand, and in South Africa the same inspectorates are responsible for the enforcement of factory legislation and of binding awards and agreements. In certain Canadian Provinces, Estonia, France, the Netherlands and Poland the labour inspectorate has been made responsible, in one form or another, for supervising the application of binding arbitration awards and-or the terms of collective agreements to which binding legal force has been given. In Germany the labour inspectors supervise the observance both of the works regulations drawn up by the employer and of the collective regulations — which have superseded collective agreements — drawn up by the Labour Trustees. In Italy the Corporative Inspectorate has, since 1928, had to supervise the application of the collective agreements and orders of the various Corporations.

On the other hand, in some countries special inspectorates have been set up to supervise the enforcement of awards or agreements. Thus, in Great Britain a special Trade Boards Inspectorate exists for the enforcement of the Wage Orders issued on the recommendation of the Trade Boards (which are a form of joint arbitration board); whereas in Ireland, which has taken over the British Trade Boards Acts, such Orders are enforced by the factory inspectors.

It is clear that this extension of the juridical bases of labour legislation has considerably widened the scope of the duties incumbent upon the labour inspection services, considered as a whole, more particularly in respect of the supervision of wage payment.

## **§ 2. — Labour Inspection as an International Problem**

### **THE PERIOD BEFORE THE CREATION OF THE INTERNATIONAL LABOUR ORGANISATION**

Ever since the first practical steps towards the international regulation of labour questions were taken, the problem of inspection and enforcement has been treated as a matter of special importance.

At the Berlin Conference, in 1890, a special Committee on the Execution of the Provisions adopted by the Conference

was set up. The Committee accepted, as a basis of discussion, a text proposed by the German Government which recommended, *inter alia*, that (in case the respective Governments should give effect to the Conference's conclusions) the enforcement of the agreed measures should be "supervised by an adequate number of specialist officials appointed *ad hoc*, and whose position should be such as to ensure their complete independence of employers and workers alike." As Italy did not at that time possess a specialised labour inspectorate, the Italian representative proposed a less rigid text. The conclusions finally adopted by the Committee and approved by the Conference were to the following effect:

"1 In case the Governments should give effect to the labours of the Conference, the following provisions are recommended:

"(a) The carrying out of the measures taken in each State shall be superintended by a sufficient number of specially qualified functionaries nominated by the Government of the country, and independent of the employers and employed.

"(b) The annual reports of these functionaries, published by the Governments of the various countries, shall be communicated by each of them to the other Governments.

"(c) Each of the States shall proceed periodically, and, as far as possible in similar form, to publish statistics on the questions included in the deliberations of the Conference.

At the International Labour Congress held at Zurich in 1897 the following resolution was adopted.

"In order to give effect to the measures of labour protection demanded by the Congress, it is necessary that a unified labour inspection service (*Gewerbeinspektion*) should be created, covering large and small industrial establishments, mines, handicrafts, home work, commerce, transport, and agricultural undertakings in which mechanical power is used. The officials of such a service should, to a greater extent than has hitherto been the case, be recruited from among those who possess expert knowledge, and their assistants, male and female, should be recruited from among the workers and salaried employees. They should be sufficiently numerous to allow of the inspection of every undertaking at least once every six months. They should have power to enforce the law, and should be independent. Their annual reports should be officially published immediately after the close of the year covered, and sold to the public at cost price.

<sup>1</sup> The English text is that published in British White Paper, Commercial No. 16, 1890 *Further Correspondence Respecting the International Labour Conference at Berlin*.

" Special inspectors should be appointed for agriculture

" Women inspectors paid by the State, and recruited in part from among the women workers, should be appointed to supervise the carrying out of provisions concerning women's work " <sup>1</sup>

At the International Congress for Labour Legislation held at Paris in 1900 (from which originated the International Association for Labour Legislation) a discussion took place on labour inspection, the results of which were summed up by the Chairman as follows .

" The Congress agrees that labour inspection (*inspection du travail*) is a necessary institution on account of its excellent results, and that it has won the confidence of the workers

" The Congress considers that it would be advisable to appoint women inspectors, medical inspectors, and worker inspectors ,

" It considers that penalties should be made more severe ,

" It considers it desirable that the inspectors of the various countries should be brought into contact with each other ,

" And it considers that the workers should co-operate with the inspectors in their efforts to enforce labour legislation " <sup>2</sup>

From the conclusions adopted at these preliminary discussions, it was thus clear that the question of inspection and enforcement would not be neglected when the time came to draft the first international labour conventions or treaties. Accordingly when, in 1904, the French and Italian Governments concluded a bilateral labour Convention for the protection of the nationals of each employed on the territory of the other, it is not surprising that the following article should have been included

" § 4 In signing this agreement the Italian Government accepts the obligation to organise throughout the Kingdom and, in particular, in industrial centres, a service of inspection which would give guarantees for the enforcement of the law similar to those given by the French factory inspection service

" It shall be the duty of the inspectors to enforce the laws for the protection of women and children and, in particular, the provisions (1) prohibiting night work , (2) respecting the minimum age at which the children should be allowed to be employed in industrial occupations , (3) respecting hours of work , (4) respecting the compulsory weekly rest day.

<sup>1</sup> DER INTERNATIONALE KONGRESS FÜR ARBEITERSCHUTZ IN ZÜRICH, vom 23 bis 28 August 1897 — *Amthlicher Bericht des Organisationskomitees* Zürich, 1898, pp 245 246

<sup>2</sup> *Report of the Congress*, published by the French Government, pp 536-537

"The Italian Government undertakes to publish a detailed annual report on the administration of the laws and orders regulating the employment of women and children

"The French Government undertakes to publish a similar report "

In 1905, when the first Berne Conference met to draft proposals for international Conventions on the prohibition of the use of white phosphorus in match-making and on the prohibition of employment of women during the night, the proposals submitted by the Swiss Government on the second of these subjects included a clause by which the States would have bound themselves, in each respective country, to entrust the enforcement of the provisions of the Convention to a supervising authority, or to perfect the existing system of labour inspection so that it would offer every guarantee for the strict execution of the provisions. Other Governments were not prepared to have such a clause inserted in the Convention itself, but it was unanimously agreed to adopt a *vau* to the same effect. At the second Berne Conference (1906) Mr Herbert Samuel proposed on behalf of the British Government the insertion in the Convention of the following article

"It is incumbent upon each of the contracting States to take the administrative measures necessary to ensure the strict execution of the terms of the present Convention within their respective territories

"Each Government shall communicate to the others through the diplomatic channel the laws and regulations which exist or shall hereafter come into force in their country with regard to the subject matter of the present Convention as well as the periodical reports on the manner in which the said laws and regulations are applied "

In moving this proposal Mr Herbert Samuel declared "The object of the present Convention is to assure those countries which may agree to prohibit the employment of women during the night, that they will not be placed at an economic disadvantage as compared with their neighbours. But such assurance will be lacking if, in some of the contracting States, the prohibition takes the form of legislation only, and no administrative steps are taken. In the history of every country it has often been the case that laws drafted on sufficiently generous lines have remained partly or wholly inoperative. I could quote cases where Acts of the British Parliament have remained a dead letter because their en-

forcement was entrusted to the local authorities, which often took no steps to see that the law was respected. . . . If such a situation were to arise in the present case, in one country or another, we should fail to achieve our object, and it would be found that international labour Conventions serve merely to voice expressions of good will without much practical value " These arguments convinced the Conference, and the proposed Article was adopted.

Finally, it may be mentioned that immediately after the second Berne Conference (1906) the International Association for Labour Legislation undertook an enquiry, with the assistance of the various national sections, into the methods of administration of labour laws in the various countries. As a result, a First Comparative Report on the Administration of Labour Laws (Inspection in Europe) was published by the International Labour Office (Basle) in 1911. The last pre-war General Congress of the Association adopted a resolution in favour of endeavouring to persuade the Governments to adopt uniform methods in the publication of statistical information on the enforcement of labour laws, so as to enable the Association to publish every four years a comparative international report on labour law administration.

#### THE INTERNATIONAL LABOUR ORGANISATION AND LABOUR INSPECTION

The Commission of the Peace Conference on Labour Legislation had to consider, among the clauses proposed for insertion in the Treaty of Peace, a clause moved by the Italian delegation, in the following form: " The principle that the various States should establish a system of inspection of working conditions in industry, commerce and agriculture, with which representatives of the workers should be associated " Baron Mayor des Planches, in moving this proposal, asked "How could the carrying out of Conventions which might be adopted be supervised if there were no system of labour inspection ? " Mr. Arthur Fontaine, speaking on behalf of the French Government, agreed in urging " that it was useless to adopt a programme of international labour legislation if there was nobody charged with supervising its application. It would in fact be to the detriment of those States who applied such legislation in a loyal spirit." In an

amended form, the clause now figures as the ninth principle enunciated in Article 41 of the Constitution of the International Labour Organisation "Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed"

That Albert Thomas was convinced of the importance of this principle is shown by the terms in which he referred to it in his first Director's Report to the Conference (1921). "The fundamentally important question of inspection will have to be dealt with in the near future", he pointed out "The importance of this question is affirmed in paragraph 9 of Article 427 But its urgency will unquestionably be felt as soon as some of the first Conventions have been ratified and applied by a number of countries

The Office proposes to publish annually a comparative study of the working of the labour inspection services of the different countries and of the results achieved. There can be no doubt that it will be of the greatest utility, in order to complete the annual reports which, under Article 408, are furnished by States that have ratified a Convention, if these labour inspection reports are also communicated It is also clear that the work of comparison and of supervision will be much more efficiently performed if the reports of the inspection services are drawn up on comparable bases, determined by the Conference, and if the services themselves are organised on similar lines.

The organisation of a system of supervision of this kind would evidently result in the disappearance of one of the gravest objections which have been made against the conclusion of international labour Conventions, viz that such Conventions do not in reality involve identical obligations for the contracting States, since they will be observed in varying degrees in each country Were the Conference to establish general rules in this matter the effect would undoubtedly be to render the application of international Conventions more uniform and to give greater force to one of the arguments in favour of international regulation, the suppression of unjust competition."

Much remains to be done if full effect is to be given to this programme, but, during the relatively brief history of the International Labour Organisation the problem of inspection has been by no means neglected

The Fifth Session of the Conference was, indeed, entirely



devoted to the question of inspection, the sole item on the agenda being . " General principles for the organisation of factory inspection ". (The term " factory inspection " must be considered as a somewhat inadequate expression of the real ground covered by the Conference's discussions. The term used in the French text was "*inspection du travail*" (labour inspection), and this term corresponds more exactly to the real scope of the question.) The Conference concluded its work by unanimously adopting a Recommendation (No 20) " concerning the general principles for the organisation of systems of inspection to secure the enforcement of the laws and regulations for the protection of the workers "<sup>1</sup>, and by adopting a resolution inviting the International Labour Office to publish a general annual report summarising the national inspection reports, and to endeavour to secure the greatest possible measure of uniformity in the presentation of the national reports (especially in the compilation of statistical tables)

The 1923 Recommendation appears to have encountered general approval, and to have inspired reforms in a number of countries. The following 24 countries have officially informed the International Labour Office that they accept the provisions of the Recommendation, either without reservations (in the majority of cases) or subject to certain modifications of detail rendered necessary by local conditions. Australia, Austria, Belgium, Brazil, Bulgaria, Cuba, Czechoslovakia, Estonia, Finland, France, Great Britain, Hungary, India, Ireland, Italy, Japan, Luxemburg, the Netherlands, Rumania, Spain, Sweden, Switzerland, the Union of South Africa, and Yugoslavia. Furthermore, the inspection systems of a number of other countries are known to be in complete or general harmony with the provisions of the Recommendation.

The Office, for its part, has endeavoured to give effect to the Conference's resolution (a) by publishing summaries or analyses of national inspection reports in the *International Labour Review*, *Industrial and Labour Information* and the *Industrial Safety Survey*, as well as by supplying annual information on developments in the various countries in the *I.L.O. Year-Book*, and (b) by directing the attention of the various Conferences of Labour Statisticians convened by it

<sup>1</sup> The text of the Recommendation is given in the Appendix to Part II of this Report

to problems of statistical standardisation. The First International Conference of Labour Statisticians (October 1923), in particular, devoted special attention to the standardisation of statistics of industrial accidents — a subject of special importance with reference to the compilation of inspection reports. In recording the results of this Conference, the Office observed: "The difficulties in connection with the standardisation of statistics of industrial accidents are largely due to the fact that they are based on legislation concerning the notification of accidents and compensation for the victims of such accidents, and the scope of the statistics cannot usually be modified without modifying existing legislation. The Conference realised this fact and therefore adopted some general resolutions on this question, e.g. concerning the classification of accidents by industry, cause, extent and degree of disability, and nature of injury. If these classifications were generally adopted some improvement would be made in international comparability, but the fact that the definition of an accident, particularly of a 'compensated accident', is dependent on the legislation in force, prevents much progress being made in this sphere" <sup>1</sup>

Apart from the general Recommendation of 1923, the Conference has adopted various other Recommendations at its different Sessions dealing with particular problems of inspection. These are

- No 5 (1919) concerning the establishment of Government health services (recommending the establishment, not only of systems of efficient factory inspection, but also, and in addition, of Government services especially charged with the duty of safeguarding the health of the workers),
- No 28 (1926) concerning the general principles for the inspection of the conditions of work of seamen,
- No 30 (1928) concerning the application of minimum wage-fixing machinery (recommending, *inter alia*, that "a sufficient staff of inspectors should be employed" with the powers prescribed by the 1923 Recommendation),
- No 31 (1929) concerning the prevention of industrial accidents,
- No 54 (1937) concerning inspection in the building industry.

<sup>1</sup> INTERNATIONAL LABOUR OFFICE *The International Standardisation of Labour Statistics* (Studies and Reports, Series N, No 19), Geneva, 1934, p. 16

Several of the Draft Conventions also prescribe specific obligations concerning the enforcement of their respective provisions by means of inspection. Thus, the Night Work (Bakeries) Convention, 1925 (No. 20), provides that ratifying States "shall take appropriate measures to ensure that the prohibition prescribed in Article 1 is effectively enforced, and shall enable the employers, the workers, and their respective organisations to co-operate in such measures, in conformity with the Recommendation adopted by the International Labour Conference at its Fifth Session (1923)". Again, the Protection against Accidents (Dockers) Convention, 1932 (No. 32), lays down that "provision shall be made for an efficient system of inspection and for penalties for breaches of the regulations". Further, the Safety Provisions (Building) Convention, 1937 (No. 62), requires each ratifying State "to maintain, or satisfy itself that there is maintained, a system of inspection adequate to ensure the effective enforcement of its laws and regulations relating to safety precautions in the building industry".

In 1930 the Director, in his Report to the Conference, mentioned the efforts that the Office had been making to use the inspectors' reports for the purpose of making international comparisons, and the difficulties that it had encountered owing to the lack of uniformity in contents and methods of presentation. He suggested that the States Members might possibly be induced to agree "to instruct their inspectors each year, in the course of their ordinary duties, to pay particular attention to one or two problems of international interest . . . and to include their observations on these matters in their international reports". This suggestion was taken up at the Conference by Mr Muller, German Workers' Delegate, who moved a resolution on the subject which the Conference adopted. As a result, the Governing Body has selected two questions for special treatment in the inspectors' reports in particular years. For 1932, the question of the organisation of safety services in industrial undertakings, and for 1936, that of accident prevention in the forestry and woodworking industry. The information obtained as a result of this agreement has enabled the Office to publish a series of special articles in the *Industrial Safety Survey*.

## THE MOVEMENT FOR A CONVENTION ON LABOUR INSPECTION

In more recent years increasing attention has been devoted to questions of labour inspection in connection with the mutual supervision of the application of ratified Conventions. The forms approved by the Governing Body for the annual reports to be supplied by the various Governments under Article 22 of the Constitution on the steps taken to give effect to the Conventions ratified by their respective States, in addition to asking for information on the practical working of the relevant legislative or other measures as shown by the inspectors' reports, request the Governments to supply details concerning the authorities responsible for enforcement, and the organisation and working of inspection.

Both the Committee of Experts and the Conference Committee on the Application of Conventions have on various occasions stressed the importance of an adequate system of labour inspection as a guarantee of the satisfactory enforcement of the legislation implementing ratified Conventions. In 1934 the Committee of Experts suggested that the Office might organise periodical meetings of representatives of the national inspection services, to be held in a succession of industrial centres, as a means of promoting collaboration both between the respective services mutually, and between them and the Office. The Governing Body fell in with this suggestion, and two regional Conferences of representatives of national labour inspection services have been organised: the first at The Hague, in October 1935, attended by representatives from Belgium, Finland, France, Great Britain, Italy, Luxemburg, the Netherlands, Norway, Portugal, Spain, Sweden and Switzerland; the second at Vienna, in May 1937, attended by representatives from Austria, Czecho-Slovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania and Yugoslavia, with observers from Bulgaria and Turkey.

Proposals for a Draft Convention on the organisation of labour inspection have been mooted for some years past. In 1934 Mr. Horszowski, Polish Government Adviser, suggested to the Conference that the 1923 Recommendation "should be completed as soon as possible by a Draft Convention". Addressing the Conference in the following year as Reporter for the Committee on the Application of Conventions he re-

iterated this suggestion. In the same year the first Regional Conference of Representatives of Labour Inspection Services asked the Governing Body to consider "the desirability of placing on the agenda of a Session of the International Labour Conference the question of the duties, the powers, and the organisation of factory inspection services, with a view to the adoption of a Draft Convention on the subject". In January 1936 the Labour Conference of American States Members of the International Labour Organisation, at Santiago de Chile, adopted a resolution suggesting to the Governing Body "that it would be desirable to undertake as soon as possible a preliminary enquiry with a view to placing on the agenda of an early session of the Conference a proposal that Members of the Organisation should take effective action to establish in each country the administrative, technical and research bodies specially necessary for the proper application of the Conventions approved and of labour law in general, such as special Ministries, superior labour councils attached thereto with representation of the State, employers and workers, autonomous inspection services with adequate powers and specialised tribunals". Finally, the Conference at its Twentieth (1936) Session adopted a resolution proposed by Mr Jurkiewicz, Polish Government Delegate, specifically requesting the Governing Body to consider the desirability of placing the question of labour inspection on the agenda of the 1938 Session of the Conference, with a view to the adoption of a Draft Convention.

The pressure on the agenda of the Conference for 1938 and 1939 was too heavy to allow the Governing Body to place the question proposed by Mr Jurkiewicz on the agenda for either of those two sessions, but at its 83rd Session (April 1938) it decided that it would bear the proposal in mind when the time came to draw up the agenda for 1940, and that in the meanwhile, as a preliminary step, the Governments of all States Members should be invited to send one or more representatives to a Preparatory Technical Conference on Labour Inspection, to be held in Geneva in the week preceding the opening of the 1939 Session of the ordinary Conference for the purpose of considering the following question:

"The general principles for the organisation of systems of inspection carried out in industrial undertakings (excluding mining and transport undertakings) and commercial under-

takings, in order to secure the enforcement of legal provisions relating to conditions of work and the protection of the workers while engaged in their work."

The Governing Body has since decided at its 86th Session (February 1939) to place the question of labour inspection on the agenda of the 1940 Session of the Conference, with a view to its being dealt with in a single discussion in the light of the conclusions to be reached by the Preparatory Technical Conference.

The Preparatory Technical Conference on the organisation of labour inspection in industrial and commercial undertakings met at Geneva from 29 May to 2 June 1939 and adopted a report. The full text of this report will be found on pp 359 to 393 of the present volume.



PART I

**COMPARATIVE ANALYSIS  
OF NATIONAL LAWS  
AND REGULATIONS**



## CHAPTER I

### ORGANISATION OF LABOUR INSPECTORATES

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The essential object of all labour inspection is to secure, by means of constant and effective supervision, that labour legislation is strictly and uniformly applied. In order to perform this task a labour inspectorate must have a number of competent officials at its disposal, and the stability and independence of their position in the civil service of the country must place these officials above political contingencies and local influences. It is indispensable that they should be able to act in accordance with uniform principles and a uniform procedure, applicable to all the establishments and persons covered by the legislation in question, and such uniform action by all persons performing inspection duties cannot be obtained unless the organisation is centralised and has at its head a supreme authority directing, co-ordinating and supervising the work of the executive organs.

In his book entitled *Les Inspecteurs du Travail*, which appeared in 1893, Cyr. van Overbergh said: "Centralisation is so much in the nature of labour inspection that in the most varied surroundings and in the most widely different forms we may observe the same process of development — sometimes slow and sometimes fast, but always distinct — towards greater unity of practice and discipline".

This opinion, expressed at a time when the establishment of inspection services was entering the practical stage in the principal industrial countries after an initial period of tentative experiments, retains its full force to-day. The tendency towards centralisation has remained constant, and numerous examples might be quoted to show that the great majority of countries which have since established labour inspectorates, or modified the organisation of services already existing, have had the centralising principle in mind.

The forms of organisation adopted for inspection services are extremely varied. In some countries the various branches of inspection—for industry, commerce, mines, transport, etc. — are brought together into a single organisation, all being subordinate to one Ministry or Government Department and all acting in accordance with the instructions

of this one supreme authority. In other countries there are several different inspection services, i.e. the various branches of inspection are organised independently of one another and placed under different national or even under local authorities, with no link between the different services and no legislative or administrative co-ordination.

These are the two extremes, between which a wide range of intermediate types of organisation may be found. The variety is all the more pronounced because, besides inspectorates properly so called, there are in many countries independent or private bodies — insurance institutions, technical organisations, etc. — which collaborate with them or make more or less independent inspections either in special fields, such as the inspection of boilers, electrical apparatus, etc., or in workplaces not subject to supervision by the official inspectorates.

Federal countries are in a special position as regards the organisation of inspection services. In these countries the right to legislate on labour matters and to supervise the enforcement of such legislation is often shared between the federal authority and the component States. In view of the diversity of economic and industrial conditions and the varying levels of social legislation which may be found in the different States or provinces of the same federation, federal countries have very often to face internally the same problems as arise in the international field between different Governments. It is therefore absolutely necessary for them to arrive, throughout their whole territory, at conditions of work as nearly uniform as possible, and more particularly at uniformity in the application of the laws and regulations governing labour questions in the different trades and industries.

The great diversity in the organisation of labour inspectorates is due first of all to the fact that the systems in question were set up and developed according as the gradual evolution of the economic and industrial life of each country and of its social legislation required the existence of inspection and supervision services; it is due secondly to the variety in the political and administrative constitution of the different countries: clearly, therefore, the services established in the different countries largely correspond to national needs and are *ipso facto* justified. Hence each country desires to retain the methods it has introduced and to secure recognition of their advantages. It should, however, be noted that all admit

the utility, and indeed the necessity, of the exercise of general supervision by a supreme central authority over all its subordinate services. Where there is no such authority, the impossibility of securing uniform enforcement of legislation, and even in some cases of collecting exact information on the work done by local authorities, for instance, shows how desirable the establishment of such a central body would be.

It is the object of this chapter to examine the organisation, in a number of countries, of the services responsible for inspection of industrial and commercial establishments (but not of mines, railways, shipping and other industries falling outside the terms of reference of this Report). It will deal with the position of the inspectorate in the general framework of government in the countries concerned, its administrative, technical and territorial organisation and structure, and the auxiliary institutions attached to it in certain countries.

The position in some federal countries will be discussed in a separate section.

### ADMINISTRATIVE ORGANISATION OF INSPECTORATES

In the first half of the nineteenth century, when a few European countries were establishing authorities to supervise the observance of protective legislation for certain groups of workers, they first had recourse to local committees, the police force, school inspectors, and sometimes to mine inspectors and similar officials. None of these authorities was able to exercise a really effective supervision. There are many reasons for this failure, the chief being incompetence or insufficient authority on the part of the persons or institutions responsible for supervision, total lack of instructions from any central body which might have secured uniform action throughout the country, absence of any control by a central authority, inability of the persons or institutions concerned to give their whole time to the work of supervision, etc.

Once they realised the ineffectiveness of any inspection scheme based on local organisation or carried out by incompetent bodies or persons, the pioneer countries were compelled to seek a solution better suited to the aims they had in view. Great Britain was the first to achieve this and the method to

adopted subsequently served as a model elsewhere. The Factory Act of 1833 (" Lord Althorp's Act ") established the first factory inspectorate with a well-defined organic structure and staffed with inspectors possessing not only the knowledge but also the powers required for performance of their duties. The Act provided for the appointment of four inspectors, each in charge of an inspection district and assisted by a number of sub-inspectors, they were responsible to the Home Secretary.

The countries whose industrial development already required the creation of an inspectorate observed the results of this experiment with the keenest interest. Despite the many difficulties which the British inspectors had to overcome and the resistance met with in certain quarters when the new scheme first came into effect, the efficacy of their work was so obvious that the countries in question gradually followed the British example, successively introducing inspection services directed and co-ordinated by a Government authority. They were followed in turn by the great majority of other countries throughout the world, and the centralising principle has been adopted almost everywhere as the organisational basis of inspection.

The main features of the administrative structure of these services is as follows: the supreme authority is in the hands of a Government department, which frequently directs and supervises the work through a central service, this is composed of officials with the qualifications and experience required to secure uniformity of action on the part of the executive organs, and the latter — i.e. the inspectors and analogous officials — are responsible for the actual work of visiting and inspecting the establishments subject to their supervision.

The following pages will deal with the manner in which the various countries have organised their inspectorates, first as regards the Government departments to which the inspectorates are attached, and secondly as regards the actual organisation of the central services and executive organs.

### **§ 1. — Government Departments to which Inspectorates are attached**

As regards the organisation of inspection in industry and commerce — for, as already stated, special branches of inspection (mines, agriculture, etc.), which do not fall within the

scope of this Report, will not be covered — countries may be roughly divided into three main groups. The first consists of those which have entrusted all inspection work to a single service; the second includes the countries which have a general inspection service with specialised divisions inside this, or have organised their inspection in several separate services but have placed them all under one and the same Government department; in the third group of countries the inspection services are separately organised and attached to separate Government departments. It should be emphasised, however, that the boundaries between these three groups are not clear-cut, since many intermediate systems may be found.

The first group includes, in particular, Poland, which reorganised its inspectorate on 14 July 1927. In that country the whole of labour inspection is under the supreme authority of the Minister of Social Assistance, who supervises the work of the service and deals in the last instance with appeals from decisions or instructions issued by the labour inspectors, save in cases where the ruling of the regional inspectors is final.

The Italian Corporative Inspectorate, too, is consolidated under the Ministry of Corporations. There is also unity in Bulgaria (where the labour inspectorate is subordinate to the Ministry of Commerce, Industry and Labour), in Czechoslovakia (Ministry of Social Welfare), in Estonia (Ministry of Social Affairs), in Greece (Ministry of National Economy, Department of Labour) and in Latvia (Ministry of Social and Public Affairs). Luxemburg has recently placed its labour inspectorate under the Ministry of Labour and Social Welfare. Among the Latin-American countries, where many inspection services have been established in the last twenty years, Chile has made the Ministry of Labour the supreme authority responsible for all labour inspection, and Venezuela has established (by the Labour Code of 16 July 1936) a labour inspectorate under the National Labour Office, which is itself attached to the Ministry of Labour and Communications. In the different provinces of Argentina the supreme authority is the Ministry of the Interior, which is competent for labour matters (as in Buenos Aires and Mendoza), or the Ministry of Education and Labour (as in Santa Fé).

Lastly, mention should be made of a number of countries where industrial life is still developing or has certain special features. In Egypt the labour inspectorate is under the

Ministry of Commerce and Industry, and in 'Iraq it is under the Ministry of the Interior. In this latter country, however, inspection applies to factories only. The same holds good for China, where the Ministry of Industry directs the Central Factory Inspection Service.

Of countries in the second group, Sweden, among others, has a single inspection service within which there are sections or inspectors specialising in certain branches of industry. The whole service has since the beginning of 1938 been under the National Insurance Institute, which is attached to the Ministry of Social Affairs. The nucleus of the service consists of the labour inspectorate proper, the competence of which extends to all industrial establishments using mechanical power. To this inspectorate are attached special inspectors, including inspectors of the accommodation and conditions of work of forestry and timber floating workers, inspectors of explosives, and inspectors of electrical plant. The inspection of establishments and workshops not using mechanical power, commercial establishments, handicraft workshops and the building industry, is performed by the local health boards, acting under the direction and supervision of the labour inspectorate. Lastly, the inspection of all establishments employing a considerable number of women is entrusted to the Chief Woman Labour Inspector and her assistants, who, though working independently, belong to the labour inspectorate.

Specialisation of certain inspectors inside the framework of a single service is found also in Finland (Ministry of Social Affairs), Denmark (Ministry of Social Affairs), Ireland and Norway (Ministry of Social Affairs), in the last-named country, however, the special inspector of explosive and inflammable substances is under both the Ministry of Social Affairs and the Ministry of Commerce.

In the Netherlands the Ministry of Social Affairs is the supreme authority responsible both for "factory and shops inspection" (which covers industry and commerce) and for "ports labour inspection", which covers the enforcement in ports of the provisions governing hours of work, employment of women and children, health and safety.

The Department of Labor of the State of New York (U.S.A.) includes an inspection division which is responsible for supervising the enforcement in industry and commerce of legislation on hours of work, woman and child labour,

health, safety, minimum wages and home work. In the same Department, the "division of women in industry and minimum wage" administers the minimum wage law and woman and child labour laws and undertakes home work inspection.

The Canadian provinces of Ontario and Quebec have centralised in their departments of labour the services responsible for inspection of factories and commercial undertakings and for minimum wage inspection.

Centralisation of the various inspection services under a single authority is also found, for instance, in Cuba (Department of Labour), the Federal District of Argentina (Ministry of the Interior, which is competent for labour matters), Peru (Ministry of Public Health, Labour and Social Welfare), some Australian States (New South Wales, South Australia, Tasmania), and Japan (Ministry of Social Welfare).

Whereas in both the first and the second groups there is a single Government authority in supreme control of inspection, whether the structure chosen is that of one strictly unitary service or that of a general service with specialist collateral branches, the countries of the third group, on the other hand, have adopted the system of a number of services attached to different supreme authorities. In some of these countries the inspection of industry and that of commerce are directed by the same authority or carried out by the same service, other central authorities being responsible only for certain inspection duties of a particularly technical character. Other countries go further in the division of their services, and have separate inspectorates for industry and commerce or even for other special subjects as well.

France belongs to the former section of this group. The Ministry of Labour is the highest authority in respect of the services which inspect industrial and commercial undertakings. The inspection of steam boilers, tubes, and containers, on the other hand, is entrusted to the mines inspectors, who are officials of the Ministry of Public Works.

The Rumanian labour inspectorate, which is attached to the Ministry of Labour, has powers in respect of both industry and commerce. Its activity is supplemented in the field of safety by the industrial inspectors of the Ministry of Economic Affairs and the technical inspectors of the Central Social Insurance Fund, an independent institution supervised by the Ministry of Labour.

In Yugoslavia the Ministry of Social Policy and Public Health is responsible for inspection in industry and commerce carried out by the labour inspectors, who are assisted as regards health and safety by officials of the Central Workers' Insurance Institute. Boiler inspection is undertaken by the Ministry of Public Works.

In Australia the Department of Labour and Industry of Queensland and the Departments of Labour of Victoria and Western Australia are in charge of inspection in industry and commerce, whereas the inspection of boilers and machinery is undertaken by the local authorities in Victoria and the Department of Public Works in Queensland and Western Australia. The last-named State also has timber industry inspectors, attached to the Forests Department. The situation is much the same in the Union of South Africa, where the Union Department of Labour is responsible for inspection in industry, inspection of commercial undertakings being entrusted to the provincial and local authorities.

The most representative country of the group possessing a number of separate inspection services is Great Britain, where the following different services falling within the scope of this Report exist: factory inspectorate, trade boards inspectorate, shops inspectors and inspectors responsible for supervising the conditions of employment of children and young persons in undertakings not covered by the Factories, Mines, Merchant Shipping, and Shops Acts.

The factory inspectorate is an executive body responsible to the Home Secretary and his administrative advisers.

As regards the trade boards inspectorate, the supreme authority lies with the Minister of Labour, acting through the Trade Boards Division of the General Department of the Ministry.

The enforcement of the Shops Act is entirely in the hands of the local authorities. Section 17 of the Shops Act of 1912 empowers the Home Secretary to "make regulations generally for carrying into effect the provisions of this Act". This provision does not appear to have rendered possible the practical establishment of supervision by a national authority. Indeed, except as regards the sanitary provisions, for which the Ministry of Health is ultimately responsible, "when local authorities fail to move, as they do sometimes, to secure observance of the law, there appear to be no powers vested in any



central authority to step in and assume responsibility ”<sup>1</sup> Nevertheless, the Home Office is recognised as having a special interest in the matter and in practice is able to intervene effectively notwithstanding the absence of statutory powers

Inspection of the employment of children and young persons in unregulated trades is also in the hands of the local authorities. The central authority for approving by-laws made under the Acts in question, and responsible in a general way for supervision of the application of the Acts, is the Home Office In a memorandum issued to local authorities on 30 November 1933, the Home Office stated that these authorities “ would appreciate the importance of making adequate arrangements for enforcing the provisions of the Act and by-laws relating to the employment of children, and for this purpose officers should be given instructions to visit periodically the places in which children work and to take action in cases of contravention ”

There are a few countries in which inspection has certain special features

In the Soviet Union the trade unions are in charge of inspection The labour inspectorate is attached to the labour protection section of the Central Council of Trade Unions of the U S S R , this body is responsible for the general direction of labour inspection, which is organised industry by industry

Lastly, it should be stated that Switzerland (which will receive attention later on, in the section dealing with the situation in federal countries) has a federal inspectorate competent for factories only This service is attached to the Federal Department of Economic Affairs

A study of the position in the different countries leads to the conclusion, first that in the large majority the inspectorate is attached to a Government authority (Ministry or Department), and secondly that the Ministries or Departments in question are those responsible for labour matters

There are, however, some exceptions. In a number of countries the regional or local authorities have been made responsible for the inspection of commercial undertakings, though sometimes these authorities act under the guidance of the national inspectorate or under the supervision of some central body In other cases, special inspectorates (such as

<sup>1</sup> J HALLSWORTH *Protective Legislation for Shop and Office Employees*, third edition, 1939, p 106

that for boilers) are under the Ministries competent for public works, mines, etc. One last remarkable fact in this connection: the British factory inspectorate is not attached to the Ministry of Labour but to the Home Office, the reason being that when this inspectorate was established attention was concentrated on its policing functions and that when — much later — the Ministry of Labour was established, the British Parliament preferred to keep factory inspection under the Home Office, since that arrangement had proved satisfactory and it was considered better to keep factory inspection (and also such matters as workmen's compensation) separate from the work of conciliation and the regulation of wages

A third conclusion is that the consolidation of the various inspectorates under a single supreme authority, or a very small number of these, is much the commonest method. Indeed the disadvantages inherent in the existence of many different authorities have induced several countries to modify their administrative structure with a view to simplification

Like other States of the American Union, Wisconsin had established, during the gradual extension of its social legislation, a number of separate agencies responsible for administration of the different types of labour laws. In 1911 the adoption of a Workmen's Compensation Act gave this State the opportunity of simplifying its administrative apparatus by abolishing the various agencies previously in existence and replacing them all by a single authority, the Industrial Commission, which was thenceforward to concern itself with all labour questions. The Industrial Commission, which is assisted in its work by various State boards, is not only responsible for supervision of the laws in force, but also has the power to issue and enforce such orders as may be necessary under them. The orders of the Industrial Commission have the force of law. The Commission is headed by three commissioners, nominated by the Governor with the advice and consent of the Senate. Each commissioner is appointed for six years, one term expiring every two years. The Commission may organise its work and personnel freely. At present it is composed of seven departments, relating respectively to woman and child labour, safety and sanitation, workmen's compensation, employment offices, unemployment compensation, apprenticeship, and statistics. The first two of these are responsible for labour inspection proper and have a large

number of inspectors and officers, including specialists, at their disposal for this purpose.

The Industrial Commission system introduced in Wisconsin has subsequently been adopted by a number of the other States of the U S A.

There has also been a simplification in the Union of South Africa. Until 1931 factory inspection, excepting the inspection of machinery, was under the Department of Labour, whereas the inspection of machinery was under the Mines Department. The inspection of boilers, lifts and machinery (except that used in the mines, agriculture or the manufacture of explosives, or under the control of the Railways and Harbour Administration) was then transferred by Act of Parliament from the Mines Department to the Department of Labour. The consolidation of factory and machinery inspection under a single authority was in accordance with the desires of employers, who had for some years been demanding a reduction in the number of inspection services. It resulted in a greatly increased output on the part of the inspectors, since it enabled them to visit factories in rural districts much more extensively than before. In view of this favourable result, the supervision of agricultural machinery was also transferred from the Mines Department to the Department of Labour in 1934.

Ireland, too, while maintaining some of the British labour laws in force, simplified its administration by establishing a Ministry of Industry and Commerce, to which the inspection of factories, shops and mines, and inspection in respect of trade boards, apprenticeship and annual holidays with pay are attached. Factory, apprenticeship and trade board inspection, and inspection in respect of paid holidays, are carried out by the same officials.

## § 2. — Organisation of Services

### CENTRAL SERVICES

In organising their inspectorates, many countries have established a central administrative service, in charge of the executive organs and directly subordinate to the competent Ministry or Department. These central services owe their existence to the need felt by the supreme authority to place the executive organs under the direct control of persons with sufficient qualifications and experience to be capable

of exercising general supervision over the work of the inspectors and other competent officers throughout the country, and of directing and unifying their work according to the principles laid down by the supreme authority. This function has as a rule been entrusted to a chief inspector, other inspectors and specialists in varying numbers being added in accordance with the size of the country and the volume of inspection duty.

Obviously the need for such a central service is felt more particularly in countries with a highly developed economic and industrial life and a total area necessitating division of the territory into inspection districts.

At present most countries have such central services, though the names attached to them vary widely (" Directorate-General of Labour " in the Netherlands, " Labour and Factory Inspection Office " in Denmark, " Section of Labour Inspection " in Japan, etc ) Their structure is similar in almost every case, and only a few typical examples need be mentioned here

In Poland, which has a single inspectorate, the central service, entitled " General Labour Inspectorate " forms part of the Department of Labour of the Ministry of Social Assistance. This service, with the Inspector-General of Labour at its head, co-ordinates and supervises the work of all the executive organs engaged in inspection throughout the country. It includes an office for the protection of female and juvenile labour, which is required to co-ordinate the work of all the officers supervising women's and children's work, and secondly a chief medical inspector of labour, whose powers in respect of industrial hygiene extend throughout the whole of Poland.

In France the inspection services are under the administrative control of the General Directorate of Labour. The latter's functions may be summarised as follows. to centralise administration in respect of all questions relating to labour, including labour inspection ; and to co-ordinate the work of the field services constituting the labour inspectorate proper. Another important aspect of its duties from the point of view of inspection is to prepare Acts, Decrees, Orders, etc , concerning the questions with which the labour inspectors must deal and to draw up the instructions sent to labour inspectors with a view to securing uniformity in the interpretation of laws and regulations. The Directorate also settles delicate

points regarding the enforcement of legislation, referred to it by the divisional labour inspectors, and undertakes numerous investigations, either on its own initiative or at the request of the International Labour Office, the Superior Labour Council, the Superior Labour Commission, or other bodies or persons

In Great Britain there are central services for factory inspection and trade boards inspection, but not for inspection of commercial undertakings or of employment of children and young persons in unregulated occupations. The headquarters staff of the factory inspectorate consists of a chief inspector, assisted by a senior deputy chief inspector and three deputy chief inspectors. These officials supervise and co-ordinate the work of the superintending inspectors and district and other inspectors, who are the executive organs proper. There are four technical groups attached to headquarters and directly under the chief inspector. These are composed of (1) the inspectors of textile particulars, (2) the medical inspectors, (3) the electrical inspectors, and (4) the engineering inspectors. At the head of each of these four groups stands a senior inspector whose duty it is to secure uniformity in inspection throughout the country within the field for which he is competent. The headquarters staff of the trade boards inspectorate is directed by a chief inspector, who is responsible for the general activity of all the services under his orders. He is assisted by a deputy chief inspector. Headquarters staff also includes a special section (officer in charge and two second-class officers) responsible for special enquiries.

#### THE EXECUTIVE ORGANS

The executive organs are the officials who, under the direction and supervision of the Minister or the central service, as the case may be, do the work of inspection properly so called; they visit and inspect the undertakings in their district, check conformity with labour legislation, and report any infringement.

Here again the systems adopted throughout the world resemble one another very closely in structure, though there are differences of detail. As a rule, effective enforcement of legislation is supervised by a body of officials organised in grades. These officials have general powers regarding the establishments to which their supervision applies and regarding

the protective legislation of which they have to obtain or supervise enforcement. In order to save the inspectors long journeys and thus facilitate the performance of their duties, Governments have divided their territories into inspection districts, subdivided in their turn in some countries (the question of territorial subdivision will be examined later), and in each of these territorial divisions and subdivisions inspection is carried out either by a labour inspector, or by a group of inspectors under the senior inspector in charge of the division or subdivision.

The organisation of inspection in France may be cited as an instance, for it is typical of a large number of countries.

The French labour inspectorate — i.e. the body of officials responsible for the direct and constant enforcement of laws and regulations governing the conditions of work, health and safety of workers in industrial and commercial establishments — is composed, in order of seniority, of general inspectors, divisional inspectors, inspectors (including women inspectors) and deputy inspectors.

Each divisional inspector is at the head of a territorial division, which is divided into sections for labour inspection purposes. Each inspection section is placed under a labour inspector or woman inspector, assisted by one or more deputy inspectors.

The divisional inspector is the administrative chief of the labour inspectors and deputy inspectors (men and women) of his division. He is himself immediately under the Director-General of Labour, and therefore under the Minister of Labour. His duty is to co-ordinate the work of the labour inspectors under his authority, advise them whenever this is necessary and supervise their activity. With this last object in view he visits establishments, sometimes accompanied by the inspector responsible for supervision there; and each month he examines the statement of visits of inspection made by the inspectors, in which the injunctions issued and reports drawn up during these visits are specified.

Each divisional inspector is assisted in the performance of his duties by a supervisory inspector; there may not be more than one supervisory inspector for every ten inspectors in any division.

The duty of the labour inspectors is to secure application in their respective sections of the provisions of all Acts and

regulations for which the labour inspectorate is responsible. They carry out their duty by means of visits to establishments and any other method of supervision at their disposal ; visits to establishments are, however, their principal function.

The deputy inspectors have the same powers and duties as the inspectors proper, but have no personal inspection section. Their section is that of the inspector to whom they are attached and under whose authority they are placed. Like the divisional inspectors, they are absolutely independent of the local authorities, i.e. the mayor and the prefect.

This type of administrative organisation has proved most effective in practice when applied to labour inspection in France, as already stated, it is to be found in most other countries, with of course more or less marked variations and with a simplified structure in the smaller States. It also serves as a basis for the organisation set up in countries whose economic and social development is of relatively recent date.

The organisation of the services responsible for factory inspection and trade boards inspection in Great Britain is conceived on similar lines. It has already been seen that each of these inspectorates has a central service, the headquarters staff. At the head of each of the twelve divisions into which the country is divided for factory inspection stands a superintending inspector who directs and controls the work of the district inspectors (the districts are territorial sections of the divisions) and of other inspectors operating in the districts. The trade boards inspectorate has nine territorial divisions, each directed by a divisional inspector assisted by several inspectors and other officials.

The inspection of commercial establishments ("shops") and of employment of children and young persons in unregulated occupations, on the other hand, is under the local authorities and not under a special inspection service.

As regards shops, the legislation respecting conditions of work contains provisions on daily closing hours, closing on Sundays and one half-day weekly, meal times and seats, and also questions of health and welfare, such as ventilation, temperature, lighting, sanitary conveniences, etc. The Local Government Act lays down that each local authority shall appoint "fit persons" to be medical officers of health and sanitary inspectors. The local authorities responsible respectively for the enforcement of sanitary provisions and of

other provisions of the legislation in respect of shops are not entirely identical. The Common Council of the City of London, the town councils of boroughs outside London, and the district councils of urban districts with a population of 20,000 or more are the competent authorities for the enforcement of both kinds of legislation. On the other hand, in London outside the City the London County Council is responsible for the enforcement of the non-sanitary provisions, and the metropolitan borough councils are responsible for the enforcement of the sanitary provisions; and in urban districts with a population of less than 20,000 and rural districts, the county council is responsible for the enforcement of the non-sanitary provisions (except in districts where a county council has delegated its powers to urban or rural district councils), whereas the urban and rural district councils are responsible for the enforcement of the sanitary provisions.

For lack of published information on the organisation of the actual inspection, and because of the variety of the systems adopted, it is impossible to give here any more exact description of the manner in which shop inspection is carried out in the different localities.

Supervision of the employment of children and young persons in unregulated occupations is also incumbent on the local authorities, namely, once more, the county and borough councils, the urban and rural district councils, the Common Council of the City of London, etc. According to information collected and published by the Home Office, the situation in 1931 was as follows: "The restrictions on employment (*sc* of children under 14 outside school hours), are enforced in about 45 towns by full-time officers specially appointed for the purpose, but 60 per cent. of the authorities report that the school attendance officers carry out the work in the course of their official duties. All these officers work in close co-operation with the teachers, and they also receive considerable assistance from the police. Cases of overwork, etc., discovered by the school medical officers or head teachers are often investigated by the attendance officers."

Utilisation of the local authorities for inspection purposes may be found in a few other countries also, including Norway and Sweden. There, however, the local inspectors act under the direction of the labour inspection service proper and in agreement with it. The action of these countries in having



recourse to the local authorities may be explained by the low density rate of the population and by the fact that the distances to be covered between different places are frequently such that a national labour inspectorate would not be able to visit regularly all undertakings where industrial or commercial work goes on. In Sweden inspection by the local authorities extends to small establishments not using mechanical power, commercial establishments, handicraft workshops and the building industry. The work of inspection is carried out by officials of the local health boards under the supervision of labour inspectors belonging to the national service and in accordance with instructions issued by them.

In the Soviet Union labour inspection is organised by branches of economic activity. The labour inspectors are appointed by the 168 central trade union committees, each of which is competent either for all the undertakings and establishments of a certain trade or industry, or for those undertakings and establishments of the trade or industry in question which are situated in a given part of the country. The official inspectors are assisted in their work by voluntary inspectors chosen among the organised workers.

### **§ 3. — Specialised Sections of Inspectorates ; Employment of Experts**

In some countries the general inspection services have specialised sections. A special group of inspectors may be responsible for supervising the enforcement of measures adopted in the interests of certain classes of workers ; or particular industries may have given rise to the creation of specialised groups of inspectors. Thus, in some States, e.g. Wisconsin and New York (U.S.A.) and Sweden, the regulations concerning the work of women and children are supervised by inspectors (men or women) who specialise in such work. Again, in view of the considerable importance of forestry in Finland and Sweden, the labour inspectorates of those countries include special inspectors who are responsible for supervising the conditions of employment and housing of forestry and timber-floating workers.

Another reason for employing specialists and experts is that, owing to modern industrial conditions, the inspectors are faced with difficult scientific and technical problems. Equipment is becoming more and more complicated, while

mechanical, electrical and chemical processes are steadily being introduced and perfected. Accordingly most countries have, by force of circumstance, reinforced their inspection services with technical experts who have special knowledge and experience, enabling them to deal with such questions from a scientific and technical point of view. In many cases the experts are permanently attached to the inspectorate. The following examples may be given.

In the Netherlands the staff of the Directorate-General of Labour includes a medical section, consisting of five medical officers (of whom one is an adviser); a technical section, consisting of two chemical engineers (of whom one is an adviser), an assistant chemist and a laboratory assistant, an electro-technical section, consisting of two electrical engineers (of whom one is an adviser) and three technical experts. For the purpose of special enquiries, the Minister may place under the orders of the Director-General of Labour persons who are not officials of the labour inspectorate.

In Italy medical inspection is assigned to a special branch attached to the central service of the corporative labour inspectorate. This branch is responsible more particularly for co-ordinating and directing the supervision of the enforcement of provisions relating to health and safety, suggesting rules for such enforcement, carrying out inspections by arrangement with the head of the service or the heads of the various administrative districts, carrying out enquiries in regard to industrial health and sanitation, etc. The branch is provided with the necessary experimental equipment for the purpose of its duties and has power to make use of existing scientific laboratories if the means at its disposal prove insufficient. The corporative inspectorate also includes other specialist inspectors competitively selected.

In 1937 the German labour inspectorate included twenty-five medical officers so distributed as to cover the whole territory and responsible for carrying out inspections and enquiries in co-operation with the labour inspectors. In Poland a chief medical inspector and four medical officers are attached to the labour inspectorate. In Egypt the inspectorate includes a technical branch consisting of four engineers.

In Great Britain the factory inspectorate includes four technical branches which are under the authority of the chief

inspector: the inspectors of textile particulars, the medical inspectors, the electrical inspectors, and the engineering inspectors. Each branch is under the direction of a senior inspector. The chief duties of the technical inspectors are as follows. The medical inspectors are responsible for the general supervision of the regulations and orders directed against industrial diseases; they carry out enquiries in regard to dangerous and unhealthy processes and advise the department on all medical questions. The electrical branch systematically inspects the places and works covered by the Electricity Regulations. The engineering inspectors advise on all engineering and mechanical questions affecting the safety or health of persons whose employment comes under the Factory Act and take part in the investigation of dangerous trades and processes. The duties of the Textile Particulars Branch are to enforce in textile factories the provisions of the Factory Act with regard to particulars of work and wages. Inspectors in the four technical branches carry out their work by arrangement with local and divisional inspectors.

Outside the framework of the factory inspectorate, there are examining surgeons who are appointed by the Chief Inspector or, where the Home Secretary so directs, by a superintending (divisional) inspector. Their duties are to carry out the various medical examinations prescribed by the Act and regulations and particularly the examination of young persons as to physical fitness for employment. In 1937 there were 1,758 examining surgeons.

In some of the States of the U.S.A. there is a marked degree of specialisation. In Wisconsin, for instance, the Department of Safety and Sanitation of the Industrial Commission, which supervises industrial and commercial undertakings, includes, in addition to the general administrative and factory inspection divisions, special divisions for building, boilers and refrigerating plant, fire prevention, electrical safety and lighting, elevators and mines. These eight divisions are staffed by specialists and work under a chief engineer. Each has specific functions, but they all co-operate so as to avoid loss of time and duplication. In Massachusetts the Department of Labor and Industries supervises industrial health and safety through its divisions of occupational hygiene and industrial safety, the staffs of which include medical officers, engineers and chemists. In New York the Department

of Labor uses, for this purpose, the engineers, technical experts, chemists and medical officers attached to the division of industrial hygiene and the engineering division.

In the Union of South Africa the Minister has power, under the Factory Act, to arrange for medical officers or sanitary inspectors to act as factory inspectors. He may also require medical officers to deliver to young persons the certificates of fitness for employment presented by the Act.

In France the Ministry of Labour may assign temporary duties in connection with the health and safety of workers to medical and engineering consultants. Such specialists are not permanent officials of the inspectorate, but like permanent inspectors they have the right to enter establishments in the performance of their duties.

#### **§ 4 — Co-operation with Other Authorities or Institutions carrying out Similar Inspections**

It frequently happens that authorities or institutions other than the inspectorate have occasion to supervise the enforcement in the same undertaking of legal provisions directly or indirectly affecting the health, safety or welfare of the workers. Such dual supervision is sometimes the consequence of national administrative organisation which makes special authorities responsible for supervising the observance of legal provisions with regard to hygiene, public health, safety, etc. Sometimes, too, there are public or private institutions which have all the necessary technical qualifications for the supervision of certain kinds of equipment, etc. Moreover, in particular cases, undertakings may be supervised from two different points of view: the safety of the workers on the one hand and the safety of the public on the other. In such cases there is dual or even multiple supervision carried out by different authorities.

In some countries steps are taken to avoid duplication as far as possible by making a single service responsible for supervision from the different points of view. Thus in France the enforcement of legislation concerning noxious fumes is supervised by the labour inspectorate, which, when visiting establishments, considers both the protection of the workers and that of the public in general. Inversely, the inspection of commercial undertakings, which in Great Britain is entrus-

ted to local authorities, is carried out in some districts of that country by the sanitary inspectors or inspectors of weights and measures who, in addition to their principal duties, also supervise conditions of employment in general

In other cases the various authorities concerned agree to perform their duties in such a way as to interfere as little as possible with the normal working of the establishments under their supervision. Owing to the great variety of institutions and authorities responsible for inspection, only a few examples will be given here.

In Switzerland there is a Federal factory inspectorate which is responsible for supervising the enforcement in the factories of the Federal factory regulations concerning not only conditions of work in general but also health and safety. In this last respect, however, the Federal inspectorate co-operates with the Swiss National Accident Insurance Fund, such co-operation being governed by the Orders of the Federal Department of Economic Affairs. The National Fund is a public institution which does not form part of the Federal administration. It acts through its governing body and management and its agencies in various parts of the country. The activities of the Fund are organised as follows. A technical division, consisting of engineers and technical experts, studies safety questions, investigates accidents and prepares rules for the avoidance of accidents. To this end it co-operates with all the existing organisations dealing with safety. It has concluded, with the private associations that have for a long time been concerned with accident prevention in certain branches of industry, agreements under which these associations are to continue their activities on behalf of the Fund. The associations in question are the Swiss Association of Steam Boiler Owners, the Association of Swiss Gasworks, and the Swiss Acetylene Company. The same applies to the service instituted by the Swiss Association of Electricians for the inspection of high tension plant except that, under the Federal Act concerning high and low tension electrical plant, this inspection service is autonomous. As regards measures of accident prevention, the Fund does not merely issue general rules; it has power to make rules for each particular case, and with this object in view it frequently prepares detailed drawings and estimates. It has safety appliances tested and manufactured on a large scale for sale on very favourable terms to undertakings. Where

costly changes are to be introduced, it grants loans to its members in order to facilitate the installation of the regulation equipment in their undertakings. The scope of the Fund's activities includes not only factories but also the building industry, carting, lumbering, the installation and repair of telegraph and telephone lines, the installation and removal of machinery, technical plant, the construction of railways, tunnels, roads, bridges and fountains, the laying of pipes and the operation of underground and surface mines and quarries. The Federal Council may extend the scope of the Fund to cover any industrial activities in which accidents are liable to occur. The Federal factory inspectors must communicate to the Fund any facts noted by them that bear on the prevention of accidents.

Similar co-operation is provided for in Hungary, among other countries, between the inspectorate and the national social insurance institution, and in Poland between the inspectorate and the technical agencies of the social insurance institute. In the latter country the enforcement of legal provisions concerning the health and safety of the workers and of the public is supervised on the one hand by the district administrative authorities and on the other by the labour inspectors, joint or separate action being taken within the limits of their competence by these authorities as provided for in the regulations issued by the Minister of the Interior and the Minister of Social Assistance.

In Turkey the enforcement of the Labour Code in general is supervised by the labour inspectors, who are responsible to the Minister of Public Economy. Conditions of health and safety for workers are also supervised by the departments of the Ministry of Health and Social Welfare and by the local authorities through their own officials. These officials must notify the labour inspectorate within forty-eight hours of the results of their inspection and of any measures they have taken.

It has already been stated that in France the mining inspectors of the Ministry of Public Works are responsible for inspecting steam boilers, pipes and containers. The supervision of steam apparatus may also be assigned to the ordinary engineers of the Highways Department and to the public works engineers of that Department. These officials carry out their inspections under instructions, not from their own

chief, but from the chief mining inspector of the district. Supervision is carried out by visiting and testing. During tests the supervisory officials are assisted by delegates of steam engine proprietors' associations approved by the Minister.

In the State of New York a large number of authorities or institutions carry out special inspections in establishments supervised by the Department of Labor. The following may be mentioned: the Bureau of Public Works is responsible for boiler inspection; the construction, breaking up and repairing of buildings is inspected by the Department of Labor and by the municipal authorities. The Child Labor Law is administered jointly by the Departments of Labor, Education and Health, officials of the three departments co-operating closely on an agreed plan, which provides for a rapid exchange of information and reports.

In Massachusetts the Division of Industrial Safety is assisted in its work by several public and private agencies. It shares the enforcement of the Child Labor Law with the local school attendance officers, who have the right to visit establishments employing children and immediately to remove from employment any child found to be working in violation of the law. Further, the local authorities co-operate with the Division in supervising the enforcement of regulations concerning hours of work for women and the weekly rest in industrial and commercial undertakings.

## TERRITORIAL AND MATERIAL ORGANISATION

### § 1 — Territorial Organisation

The first Act instituting a modern factory inspectorate, Lord Althorp's Act of 1833, divided Great Britain into four districts, for each of which an inspector was appointed, with a few sub-inspectors whose number was to increase rapidly in the course of time.

The principle of dividing national territory into districts for inspection purposes was adopted in turn by most countries.

The object of doing this was to make the activities of the inspectorate as effective as possible. An inspector who has a wide area to cover frequently has to make long journeys if he wishes to visit all the establishments within his

jurisdiction in turn and at not too distant intervals. Besides, he may have to visit some establishments several times so as to make sure that they are complying with the regulations. Such travelling involves considerable loss of time and prevents the inspector from giving all his attention to his real work.

Further, it may often be desirable that the inspector should be acquainted with the peculiarities of the industries, establishments and working population in his area. That is impossible in a wide area.

Such are the main reasons for dividing a country into districts. How and according to what rules has the principle been applied in practice ?

The first question that arises is how many inspectors the administration will have at its disposal. It is useless to provide for more districts than there are inspectors with the necessary qualifications for directing the work in those districts.

Further, allowance must be made for the number of undertakings to be inspected and their density in a given area, the political and geographical structure of the country, the means of communication, and sometimes even languages.

In basing the territorial division of their inspectorates on such considerations, States have been influenced by their financial resources and by the development of their social legislation and of their economic and industrial systems. In the course of time, they have sometimes increased or reduced the number of territorial divisions to meet a changing situation or new needs. It is therefore impossible to establish a common standard for all, or one that will be applicable at all times.

The following examples may be given of existing organisations.

As has been stated, in 1833 Great Britain was divided into four territorial divisions for inspection purposes. In 1937 the number of divisions was twelve, each being under the authority of a superintending inspector. Each division is in turn divided into a number of districts, between seven and ten, each district being placed under a district inspector assisted in the more important districts by one or more inspectors. The total number of districts was ninety. The average number of establishments per inspector in England and Wales is somewhat over one thousand.



France is divided into twelve divisions, each under a divisional inspector. Each division is divided into as many districts as there are inspectors in the division. The limits of the women inspectors' districts are not the same as those of the men inspectors. Men and women inspectors responsible for the same territory inspect different establishments. The limits of the districts are drawn with a view to the best possible distribution of the work. The density of the undertakings, their size and the facilities for supervision and communication are taken into account. Accordingly the areas of districts vary considerably. Whereas the districts of some inspectors only cover the town in which they live, or part of that town (for instance in Paris, Lyons and Lille), those of inspectors who are responsible for only slightly industrialised areas cover one or two Departments. The approximate number of establishments to be supervised by each inspector also varies from one district to another.

Up till 1938 Rumania was divided into fifteen regional inspectorates and four sub-inspectorates. In order to comply with the recent General Administration Act, which divides the country into ten administrative districts, the Minister of Labour redivided the national territory into ten inspectorates and twelve sub-inspectorates. By maintaining all the existing inspectorates, in some cases as sub-inspectorates, and by setting up new inspectorates, the Minister has reduced the areas to be covered by the inspectors.

In Switzerland there are four territorial divisions for inspection purposes. In dividing up the country, the languages spoken in different areas were taken into account. Thus, the first division consists of all the French-speaking cantons and the French-speaking part of the canton of Berne.

In Sweden the number of inspection districts was increased from nine to eleven in 1938. Each district is under a senior inspector to whom assistant inspectors and sub-inspectors are attached. The women inspectors are assigned to four districts specially instituted for their purposes. The total area of Sweden is 448,300 sq. kms, and the average area of a district is therefore about 40,800 sq. kms. More sparsely populated districts have a much greater area than others where the population is denser.

## § 2.— Material Organisation

The material organisation of inspection services — i.e. the offices and the travelling facilities placed at the inspectors' disposal — is clearly a matter of internal administration. Generally speaking such organisation is not governed by national enactments, but nearly always by administrative decisions, service regulations, and even custom.

Nevertheless administrative organisation has a considerable influence on the efficiency of inspectors. Some reference must therefore be made to it here.

### TRAVELLING

The purpose of labour inspection is to see that labour laws and regulations are strictly enforced. This is mainly done by visiting and inspecting the establishments covered by the legislation. The efficiency of the service depends largely on the frequency and regularity of the visits and inspections, and some regulations provide for instance that inspectors must visit all the undertakings in their area at least once a year.

Consequently an inspector is obliged to move frequently from one point to another in his area. He must especially visit isolated undertakings that are distant from important centres and where supervision is sometimes more necessary than in such centres. He must also make a point of revisiting undertakings to see that any comments he may have made have been given due consideration.

Even in districts whose area is small, such travelling is costly. It would be neither fair nor advisable to make the inspector bear the expense. According to the information at the Office's disposal, the usual practice is to consider that the inspector is travelling on official business and to refund him any expenses so incurred.

British factory inspectors are entitled to railway fares, or to a mileage allowance when they use a private car for official business. Further, they receive a subsistence allowance for each day on which they spend more than ten hours away from home. The position in Ireland is similar.

In France inspectors residing in towns of some size receive a lump sum allowance for travelling, the amount being fixed

with reference to the population of the area. For travelling outside their place of residence, divisional inspectors receive an allowance which covers any hotel and restaurant expenses entailed by residence away from home, and their fares. When travelling by rail, divisional inspectors and higher inspectors are entitled to first-class, and inspectors in lower grades to second-class, fare. When inspectors use their own cars, they receive a mileage allowance which varies according to the horsepower of the car. When other means of transport are used such as motor-coaches or taxis, the inspector recovers the amount spent, on producing vouchers.

In Switzerland travelling expenses are refunded on the basis of the rates charged by passenger transport undertakings or of the mileage covered by car.

In Greece a certain number of free railway tickets are placed at the disposal of inspectors for travelling on official business.

#### OFFICES

An inspector's duties involve, in addition to the visiting and inspection of establishments, a considerable amount of office work, such as correspondence, perusal of documents, filing, preparation of statistical returns, and the drafting of reports and memoranda, often the inspectors have to receive visits from employers and workers, to meet together for the discussion of official business, etc.

The necessary conditions for the proper discharge of these duties can hardly be found at an inspector's private residence. Suitable accommodation may be lacking, either because there is not enough room, or for reasons that are personal to the inspector. Since an inspector's private residence is often situated at some distance from the centre of the locality in which he operates, it may be less easy to reach than an office in the neighbourhood of the public administrative buildings. Further, there can be no doubt that many people will hesitate to visit an inspector at his home, though they would not object to doing so at office premises. For all these reasons, it is useful for a labour inspectorate to have administrative offices at the regional or district headquarters. Such offices should be in the centre of the locality and open to the public at all reasonable hours. They should be so equipped as to meet all official requirements.

What little information the Office possesses on this subject may be summed up as follows.

In France the offices of the divisional inspectorates are situated in the towns where the divisional inspector resides. The premises are rented by the central administration, which provides the necessary equipment and a telephone.

Until a few years ago, the labour inspectors had offices, which they themselves furnished, in their homes, and received an allowance for office expenses. The central administration had a telephone installed at the office of every inspector and an appropriation for telephone calls was made in the budget of each district inspectorate. This arrangement is being altered. At present most inspectors have an office which is separate from their private residence, the administration hiring and furnishing the premises and installing a telephone. One or two secretaries work in the office and receive visitors when the inspector is absent. All inspectors will probably have such offices before long.

In Great Britain inspectors are provided with suitable offices with telephones and the necessary equipment, and with clerical assistance.

In Poland both the divisional and the district inspectors have offices specially equipped for the purpose and provided with a telephone.

In Switzerland the Federal Factory Inspector has offices at the headquarters of each of the four districts, a telephone and the necessary equipment being provided.

In Massachusetts the main office of the inspectorate is in the State House at Boston, branch offices being maintained in the five principal towns, each with a clerical staff and the necessary equipment for proper working.

### SAFETY AND HEALTH MUSEUMS, ETC.

In a number of countries there are safety and health museums or exhibitions, established either by the Government or by private initiative. In most cases these institutions are independent of the inspectorate and organised separately. Nevertheless, the inspectors often collaborate in the direction and organisation of them, and keep the collections of exhibits up to date.

The utility of institutions of this sort is incontestable. The machines and other apparatus, models of plant, graphs, etc., which are exhibited, and the regular courses of lectures which some institutions provide, are valuable factors in the training of new inspectors. Employers and workers can examine the latest apparatus and fencing devices, learn how they work, and obtain an idea of their advantages and disadvantages. Moreover, the general public has an opportunity of learning by this means of the difficulties attending modern industrial life and of understanding the risks to which workers are exposed during their labour.

One of the most important of these exhibitions is the Home Office Industrial Museum in Great Britain. This consists of a permanent exhibition of methods, arrangements and appliances for promoting the safety, health and welfare of industrial workers who come under the Factory Acts. In the safety section of the museum the exhibits consist chiefly of the actual machines, plant and appliances as they would be installed in a factory or elsewhere. These exhibits are supplemented by an extensive collection of photographs of actual installations in different parts of the country. The health sections include photographs showing methods of preventing occupational diseases and charts indicating the incidence of these diseases in several industries. Other sections are devoted to demonstrating the principles of efficient industrial lighting, heating, and ventilation. The welfare section of the exhibition includes rooms fitted up as an ambulance room, rest room, canteen, etc. The museum shows not only what is best, but, by contrast and by way of warning, dangerous plant and appliances which have been found in actual use. The director of the museum is the Chief Inspector of Factories, and one of the engineering inspectors takes charge of the museum, with the assistance from time to time of other members of the Factory Department of the Home Office.

In Poland there is a Technical and Industrial Museum at Warsaw; a permanent exhibition of safety appliances and an industrial safety consultation office were attached to the museum in 1938.

Other museums of a similar character are the following: in France, the Museum of Industrial Safety and Hygiene at the School of Arts and Crafts (*Conservatoire des Arts et Métiers*),

Paris ; in Germany, the Labour Protection Museum at Berlin, the Social Museum at Munich, and the Permanent Exhibition for Labour Protection at Frankfort-on-Main ; in Italy, the Permanent Safety and Hygiene Exhibition at Milan ; in the Soviet Union, the Central Labour Protection Museum at Moscow, which is under the Central Council of Trade Unions of the U.S.S.R. ; in Luxemburg, the Industrial Safety and Hygiene Museum ; in Czecho-Slovakia, the Technical Museum at Prague, in Hungary, the Social Hygiene Museum at Budapest, in Estonia, the Hygiene Museum at Tartu, and in Argentina, the Social Museum at Buenos Aires.

In the Netherlands the Safety Museum at Amsterdam is a private institution subsidised by the State. Other private institutions subsidised in this way are in Denmark, the Permanent Labour Protection Exhibition at Copenhagen ; in Norway, the Technical Museum at Oslo, in Sweden, the Permanent Workers' Protection Exhibition at Stockholm ; in Finland, the Permanent National Exhibition for Labour Protection at Helsinki ; in Bulgaria, the Permanent Exhibition for Industrial Safety at Sofia. South Africa has two Workers' Protection Museums, one at Capetown and the other at Johannesburg. Lastly, there is the American Safety Museum at New York.

In Switzerland there is the Industrial Hygiene Collection, founded by the Polytechnic School at Zurich, and maintained by it in collaboration with the Federal Factory Inspectorate, and the Industrial Hygiene and Safety Museum at Lausanne, which is entirely in the hands of the Federal Inspectorate.

## THE SITUATION IN FEDERAL COUNTRIES

In federal countries the question of labour inspection takes on a special character, which may be described here by way of information. A first remark : in federal countries, and particularly those with a very large area, such as the United States of America, Canada, Brazil, Argentina, Australia and India, the peculiar geographical structure, climate, character and density of population, development of economic and industrial life, etc., of each of the federated States, Provinces, Cantons, etc., often differ widely, and naturally there are sometimes also very considerable variations in the

standards of social legislation and labour inspection. Consequently, these States have to face inside their own borders problems analogous to those which arise in the international field.

A second conclusion proceeds from the political and administrative constitution of the federal countries, which may be divided into three groups from this point of view. In the first, labour legislation and administration (including inspection) are within the exclusive competence of the States, Provinces, etc., composing the federation. In the second, on the other hand, the exclusive right to legislate on labour and inspection matters lies with the central authority. In the third group, which lies between the extremes represented by the other two, the constitution divides the rights in question between the Federal authorities and the States, Provinces, etc.

Canada belongs to the first group. Each of the Provinces has its labour legislation and its inspection service, which it organises as it thinks fit, the Dominion authorities cannot intervene.

Venezuela and Brazil belong to the second group. The Venezuelan Labour Act of 16 July 1936 applies to the whole territory; it states that there shall be labour inspection services, dependent on the National Labour Office, in the national capital and the capital of each State and Federal territory and that they shall carry out inspection throughout the country. In Brazil the Federal authorities are competent to legislate on labour matters, and to organise labour inspection services on a national scale; inspection is now carried on, under the authority of the Federal Ministry of Labour, Industry and Commerce, by the National Labour Department and its representatives in the Federal district, and by regional inspectorates attached to the Federal Ministry of Labour, Industry and Commerce in the States and in the territory of Acre.

Most federal countries fall within the third group, which includes India, Mexico, Australia, Argentina, the United States and Switzerland. Some of these have been attempting to render their legislation and their inspection services as uniform as possible.

In Australia the various States of the Commonwealth, in the exercise of their powers for the regulation of conditions of work, have adopted a number of Acts for the control

of factories and shops, the determination of conditions of work by arbitration courts or wage boards, the inspection of machinery, scaffolding, etc. Though there are differences of detail, the laws of the six States exhibit in the main the same general tendencies. The Commonwealth authority is competent to regulate conditions of work in certain "federal territories" over which it has entire control and to fix the conditions of Commonwealth employees (e.g. on Commonwealth railways and public works). It also has control of the maritime industry as regards inter-State and oversea shipping. Otherwise, the Commonwealth does not regulate conditions of work. It has however established, in virtue of a special article in the Constitution, a Commonwealth Court of Conciliation and Arbitration "for the prevention and settlement of industrial disputes extending beyond the limits of any one State". Most of the skilled trades are regulated by this Court's awards, the number of workers concerned being probably half a million, or about 30 per cent of the total number of wage earners and salaried employees in Australia. These awards cover a wide range of subjects, including wages, hours of work, overtime, holidays, and the conditions of employment of women, young persons and apprentices. There is legislative provision for the appointment of Government inspectors to supervise the enforcement of Commonwealth awards, but so far only one such inspector has been appointed, for the supervision of conditions of employment of non-manual workers (journalists, bank employees, insurance employees); the great majority of the awards are policed by the unions concerned.

In Argentina the Federal District was the first unit to establish a Labour Department. The labour inspectorate of the Inspection Division of this Department has to supervise conformity with labour legislation in the District. A number of Provinces gradually followed suit and established Provincial Labour Departments and inspection services on the model of those of the Federal district. These inspectorates are required to enforce not only the Provincial Labour Acts, but also the Federal provisions on labour matters passed by the national Parliament in virtue of the power conferred upon it by the Federal Constitution.

In Mexico, under Article 123 of the Constitution of 1917, the State Legislatures were entitled to pass labour legislation in accordance with the needs of the different parts of the



country, provided always that the "constitutional principles" were not infringed. The States used this right, but the diversity of the legislation thus passed ran counter to the objects of the Constitution, partly because some extensive industries were subject to the jurisdiction of several States and partly because each separate Government used its labour legislation to compete with the neighbouring States by fixing standards of employment inferior to those specified in the Federal Constitution, with the object of attracting industries to its territory. Such action being contrary to the spirit of the Constitution, and for reasons of a political and economic character, the Federal Government felt itself obliged to modify the Constitution, it therefore passed an Act dated 31 August 1929 amending the above-mentioned Article 123 and bringing labour legislation for the whole of Mexico within the exclusive competence of the Federal Congress. Under the same Act, Article 73 of the Constitution was amended to include the following provision. "the administration of labour laws shall be the duty of the authorities of the States, within their respective territories, in the manner and subject to the conditions laid down in the regulations, except in the case of matters relating to railways and other transport undertakings carried on under a Federal concession, mining, the working of hydrocarbons, and work performed at sea and in maritime districts."

It was on the basis of these new constitutional provisions that the Federal Labour Act of 18 August 1931 came into force throughout the territory of the Republic, the Federal and local authorities being required solely to enforce it in the cases and under the conditions prescribed in the Act itself. At present, therefore, the members of the Federal Inspectorate supervise the railways and other transport undertakings operating under Federal concessions, the mines and the petroleum industry. Further, they are required to supervise the observance of legislative provisions respecting the employment of women and children in (1) transport undertakings; (2) undertakings extracting ores belonging to the nation; (3) undertakings importing or exporting electric power or other material power; (4) production and transmission of power by undertakings under Federal jurisdiction or operating with Federal concessions, if their activity extends to several States, territories or districts; (5) industries under Federal jurisdiction or under local jurisdiction, if a dispute affects

several States, territories or districts. The Federal inspectors also supervise the observance of the stipulations of collective agreements which have been declared binding for several States, territories or districts. In all other fields the State authorities are responsible for inspection

In India the power to legislate on labour matters is, generally speaking, shared between the central and provincial authorities. Inspection is, however, carried out by the provincial authorities

In the United States labour inspection in industry and commerce is within the powers of the State Governments. An attempt made by Congress towards the end of the Great War to give the Federal Department of Labor the right to supervise enforcement by the States of legislation prohibiting child labour in industry was declared unconstitutional by the Supreme Court.

An important step towards the establishment of federal inspection was taken in June 1938 with the adoption by Congress of the National Fair Labor Standards Act. This fixes "a ceiling to hours and a floor to wages", it also abolishes child labour in the major industrial and commercial activities of the United States

Under the Act, the Federal Department of Labor, through its Children's Bureau, is to administer the child labour prohibition, with co-operation from local inspection agencies. The hours and wages provisions of the Act are to be administered through a new Division of Hours and Wages in the Department of Labor, under the direction of an administrator. This official and his representatives have power to investigate and gather data regarding wages, hours and other conditions and practices of employment in any industry subject to the Act, and to enter any workplace in such an industry.

With the consent of the authorities responsible in the various States for enforcement of State laws concerning labour, the administrator (or the head of the Children's Bureau as regards child labour) may, for enforcement of the Act, utilise State and local agencies which undertake supervision, and their employees, and may reimburse such agencies and employees for services rendered in this connection

According to information communicated to the Press <sup>1</sup>,

<sup>1</sup> *New York Times*, 5 October 1938

the administrator has announced that Government supervision of enforcement of the Act will be exercised through regional offices, and has fixed the number of regional areas at twelve. Regional directors appointed under civil service requirements will administer these regions, and will be trained in Washington before taking over their duties. The administrator announced further that owing to lack of funds only a skeleton staff could be employed and that he must wait until Congress has made new appropriations enabling the regional offices to be provided with full personnel and the new Wage and Hour Division to start work.

Furthermore, in a statement made to the Fifth National Conference on Labor Legislation, held in Washington in November 1938, the administrator of the Wage and Hour Division stated that he desired to leave the direct enforcement of the Act to State Departments of Labor; he stressed the necessity of securing co-operation between the Federal and State Governments for such enforcement without delay, and of maintaining uniform policy and procedure regarding inspection throughout the country. He expressed the hope that the next Congress would appropriate funds making it possible to reimburse States for the cost of the services which the Division was asking of them.

The Conference approved the wage and hour standards for the State agencies which will be called upon to co-operate in the enforcement of the Fair Labor Standards Act. These standards provide, *inter alia*, that each State agency, which must be under the direction of a full-time executive and be provided with adequate staff, must submit for the approval of the administrator of the Wage and Hour Division and the head of the Children's Bureau a plan of co-operation including a full description of the organisation of the State agency concerned.

A special system has been in force in Switzerland for many years. The functions of inspection are divided under the constitution of that country between the Confederation and the Cantons. The Confederation is entitled to legislate on employment in factories and handicrafts, while the Cantons have the power to regulate labour matters except those within the scope of the Federal legislation. Enforcement of Federal Acts and other measures is incumbent on the Cantons. The Federal Government (Federal Council) has the supreme right of super-

vision over such enforcement and may require the Cantons to submit reports to it on the subject

The Cantons organise as they think fit the services responsible for enforcement. In some, particularly those where industry is highly developed, cantonal inspection services have been established to this effect. In others the prefects, assisted by the police or the local authorities, are responsible; and in others again, the communal authorities or the police alone.

There is a Federal inspection service only as regards the field covered by the Federal Factories Act. This service acts as a supervisory organ, exercising the supreme power in that connection vested in the Federal Council; it is placed under the Federal Office for Industry, Arts and Crafts, and Labour, which is itself a division of the Federal Department of Economic Affairs.

The discharge of their duties by the Federal factory inspectors involves constant collaboration with the cantonal authorities responsible for enforcement. In the Cantons which have their own inspection services this collaboration gives rise to very little difficulty, the Federal inspector arranging with the cantonal inspector to avoid overlapping and friction. But the same cannot be said of the relations with the other Cantons, the municipal and local authorities, etc. Here the Federal inspectors may find themselves faced with difficulties. "In certain regions we constantly encounter complete apathy or evident ill-will on the part of the local authorities and of certain prefects, particularly as regards the provisions relating to the organisation of work. Often the cantonal authorities intervene, following on our reports, with such lack of conviction and such consideration for the infringing party as to explain the complete inefficacy of our action."<sup>1</sup> "Our relations with the cantonal authorities continue to be cordial and good, and we would emphasise that we have received from these authorities full comprehension and valuable aid in the performance of our functions. While stating that the higher cantonal authorities duly carry out their duty of enforcement, it must be added that the lower authorities do their work badly; particularly in the small communes, factory inspection leaves much to be desired."<sup>2</sup> Similar facts are regularly noted by the Federal inspectors

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<sup>1</sup> Reports of the Federal factory inspectors for the year 1937, p. 27

<sup>2</sup> *Ibid.*, pp. 87-88

in their reports for recent years, though it would seem that the cases in question represent an exception rather than the rule

Further, it appears from these reports that the courts before which cases of infringement are brought, particularly those of regions where there is little industrial development, do not realise the desirability of properly suppressing such infringements. Consequently the Federal inspectors find themselves obliged to draw the attention of the cantonal authorities and, where appropriate, the Federal authorities, to rulings which they consider erroneous or insufficiently severe

In the field of accident prevention the Federal inspectors collaborate with the Swiss National Accident Insurance Fund, an autonomous institution. As stated above, the details of this collaboration are governed by orders of the Federal Department of Economic Affairs and no difficulty arises

## CHAPTER II

### THE INSPECTING-STAFF

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The enforcement of protective labour legislation depends largely on the conscientiousness and efficiency with which the inspectors carry out their duties. The existence in most countries of special regulations concerning the selection and training of suitable staff is a clear proof of the special importance attached to the capabilities and, more particularly, to the standard of specialisation which should be required of those responsible for labour inspection. It is only in very rare cases that officials belonging to a general department of the public service are called upon, without previous training, to act as inspectors in addition to their other duties. It may sometimes happen that any person belonging to a public service is eligible to become an inspector, but this method of selection may be considered exceptional and results from certain peculiar local conditions; it is, in any case, a method that is tending to disappear.

As a general rule, the supervision of the enforcement of labour legislation is carried out by a special body of officials, the composition of which may differ appreciably from one country to another, but the recruiting of which is governed by regulations which generally reveal an obvious desire to guarantee the best possible selection of candidates. The practical methods of selecting and training future inspectors vary quite considerably, but it is not difficult to pick out certain general principles reflecting the different aspects of the problem of building up an inspecting staff capable of carrying out satisfactorily the duties entrusted to it.

It may be mentioned, first of all, that the tasks allotted to the inspection service are so varied that most countries have found it desirable to include among the inspectors persons with the widest possible range of training and varied experience. This tendency to include in the inspection staff heterogeneous elements with a variety of knowledge and practical experience is reflected not only in the nature of the existing systems of recruiting, which call for candidates with very varied qualifications, but also in the fact that there are many grades in the inspectorate, for admission to which different degrees of

education are required. Quite often there are certain inspectors possessing all the powers conferred by law on the inspection service and, side by side with them, other grades who may have simpler or more restricted duties and are recruited from among persons not possessing the degree of training required of the actual inspectors. The regulations concerning the recruiting and status of the different categories of inspectors are generally so diverse that it will be desirable to consider them separately.

There will be found below a survey of the regulations concerning inspectors with full powers and a survey of the regulations concerning auxiliary inspectors, it being understood that this latter category may include several grades of staff.

For both these main divisions, the problems connected with the appointment and the status of inspectors are naturally similar in nature, so that for both groups it will be necessary to consider an almost identical list of fundamental points and to study the solutions adopted for the various problems in different countries. The following are the chief questions to which replies must be sought :

1. What are the qualifications required of inspectors ? In particular, what diplomas or what standard of education may be required of candidates ? Is practical experience necessary or not ?
2. Are inspectors recruited by selection or by competitive examination ? What methods are followed in the two cases ?
3. By what means are the abilities of new inspectors tested and how are they trained for their future duties ? Is there a qualifying period or a special examination before they are confirmed in their appointments ?
4. What are the conditions of service ? In particular, what is the status of inspectors and their situation as regards remuneration, promotion, pensions, etc ?

After dealing with these questions, a further point will have to be considered — the employment of women in inspection services. This question must be treated separately because, although women may be admitted to the higher as well as the lower grades of the staff, their rights and duties often differ from those of male inspectors. Normally certain special tasks are assigned to them and, in the majority of

cases, their situation is one of inferiority which is not always justified by any distinction in the qualifications required. The chief purpose of this part of the survey, therefore, will be to determine the points on which there is discrimination against women.

### INSPECTORS WITH FULL POWERS

At the outset, it may be well to emphasise that this section deals only with the methods employed for building up a body of officials specially trained to exercise supervision over the enforcement of labour legislation. No attention will be paid to the cases — comparatively infrequent — in which supervision is exercised by a staff belonging to various central or local administrative departments and carrying out inspection work as a subsidiary task, or the cases in which the inspectors, even if they do not have other duties, are not required to have any special training or professional qualifications. This restriction is necessary because otherwise the Report would have to deal with the recruiting of civil servants in general, which would be quite outside the scope of the present study.

It may also be well to indicate that the term “inspectors with full powers” is taken to mean the chief supervisory officials who exercise all the powers and functions laid down in the legislation concerning labour inspection or, at least, all the fundamental powers and functions. Quite apart from their academic qualifications or degree of education, which, as will be seen, may vary from country to country, these officials form the nucleus of the inspection service, and when they are assisted by auxiliary staff the latter generally work under the guidance of the former, who are ultimately responsible.

The questions enumerated above must now be examined — first of all and principally with regard to inspectors with full powers, as defined above.

#### § 1. — Qualifications required

Candidates for posts in the inspectorate must satisfy three types of conditions. In the first place, they must produce a diploma or educational certificate the nature of which, as has just been mentioned, varies very considerably. They must, in addition, give proof of a certain amount of practical



experience, this is generally additional to the first condition, but sometimes it is an alternative whereby persons may become inspectors without being required to show proof of any special educational qualifications. In the third place, inspectors must satisfy certain general conditions as to age, nationality, health, character, etc., most of which will be mentioned here simply for the sake of completeness.

### EDUCATIONAL QUALIFICATIONS

It may not be out of place to mention that, for the purposes of the classification given below, educational qualifications will be taken to refer to the training of a general or technical nature given in public educational institutions. From this angle a distinction must be made between the stage reached in the institution in question and the nature of the course of instruction followed.

#### *Standard of Education*

The regulations in force do not always specify any precise standard of education as an essential condition to be fulfilled by all candidates. This is true more particularly of countries in which new officials are selected in the light of certain empirical principles applied either by a special recruiting body or by the competent administrative department, which are guided in their decisions by the actual requirements of the vacant post rather than by any standard criterion.

In Great Britain, for example, candidates for appointment as factory inspectors must show that they have experience and have received systematic education qualifying them for such work. They are usually required to possess a university degree or some equivalent qualification, but the Civil Service Commissioners may dispense with these qualifications when candidates have suitable practical experience.

In Ireland candidates must satisfy the Civil Service Commissioners that they have such experience, and have received such systematic education, general and/or technical, as, in their opinion, fits them for the post. In general, a university degree or some equivalent qualification is required.

In Switzerland the conditions to be fulfilled by candidates for the Federal inspection service are not strictly laid down, but may be fixed for each particular case. All that can be said to be required of candidates in general is that

they should have a good general education and some understanding of technical and labour matters. Preference is given, however, to those who have undergone a course of higher technical or scientific education, but capable persons who have not completed any such course may nevertheless be appointed.

In New Zealand, on the other hand, complete latitude is left to the Governor-General in the selection of inspectors; the legislation merely states that the persons appointed should have the necessary qualifications.

In Denmark also the legislation refers simply to technical ability, but, according to official information, only persons with a diploma from a higher technical school have been appointed in recent years.

In Norway the legislation does not require any special diploma of candidates, they must merely possess knowledge and experience of technical matters.

Similarly, in Lithuania the legislation does not specify the degree of education to be possessed by labour inspectors but candidates are required to have had at least a course of secondary education and to possess a good knowledge of social legislation.

In the U S S R. there are no definite provisions concerning the qualifications required, but it would seem that, as a rule, the inspectors hold a diploma in law, engineering or medicine, according to the branch of the service to which they belong.

The situation is somewhat different in countries where admission to the inspection service is by competitive examination in which the tests are sufficiently difficult to provide an almost complete guarantee that the candidates will have the necessary qualifications. This is the case, for instance, in France, where even persons with no diploma or with only an intermediate course of education behind them may enter for the competitive examination if they fulfil certain conditions laid down by the Supreme Labour Council concerning their previous service or practical experience in industry.

In Spain persons entering for the examination are not required to possess any special diploma, but in practice account is taken, in the selection of candidates, of any technical or university degree they may possess. The legis-

lation leaves the authorities entirely free on this matter, specifying merely that the candidates must either have a diploma proving that they have the necessary education or be well known to possess wide knowledge of the matters prescribed as necessary by the Government department concerned

A less strict system of recruiting, but guided by similar principles, is practised in the United States of America. Leaving out of account the numerous differences resulting from the autonomy of each State in this matter, it may be said that the predominant feature of the system would seem to be the special importance attached to the practical knowledge of the candidates and, as a corollary, the fact that relatively less importance is attached than in most countries to the standard of education. It would seem that the degree of education usually required is that represented by the diplomas of the high schools, which correspond more or less to secondary schools in Europe. It should be noted, however, that the inspection services of the various States include large numbers of persons with a higher degree of education, and also some of a lower standard.

A similar state of affairs exists in some other Anglo-Saxon countries, as for instance Australia, Canada and the Union of South Africa.

All the cases mentioned above are characterised by the fact that the degree of education required is not strictly laid down in the national regulations and that consequently the inspectors with full powers are, as a general rule, recruited from among persons with varying degrees of previous training. It should be noted, however, that the countries with such an elastic system of recruiting are not in the majority. There are very many other countries in which the degree of education required of candidates is exactly defined. As these countries will have to be mentioned again in connection with the nature of the course of study followed, it will suffice to state here that the standard of education which is compulsory for appointment is generally that of a university or higher technical school.

#### *Nature of the Course of Study*

Among the countries in which labour inspectors are required to have completed a course of higher education

an important place must be given to those which require definitely technical training. In these countries a candidate cannot be accepted as fit for appointment as an inspector unless he holds a diploma from a technical college of university standing or — which amounts to the same thing — has completed a course of study in such a college. This is the case for example in Belgium, Czecho-Slovakia, Germany, various Indian Provinces, Luxemburg and Yugoslavia. The formula adopted for defining the required training is rather more elastic in Finland, because any certificate guaranteeing the necessary knowledge and ability may be accepted in place of an engineering diploma from a higher technical college. In Sweden also candidates are required to have completed a course of study in a higher technical college or to have had equivalent training. The definition is even less rigid in the Netherlands, where inspectors are required to possess a university degree and are recruited as far as possible from among engineers trained at the Technical University in Delft. In Poland also the legislation merely stipulates that inspectors shall be appointed from among persons having higher education, preferably of a technical nature.

In several countries the studies required of candidates are defined in a still wider manner and there is a free choice between various types of certificated students. In Estonia and Hungary inspectors may be recruited from among persons holding a diploma from a university or a higher technical school. It should be noted, however, that in practice the latter country appoints practically all of its inspectors from among mechanical engineers. The Rumanian inspectorate is open to persons possessing a university degree in law, economics, social science or some technical subject. The diversity of the courses leading up to appointment in the inspectorate is still greater in Italy, where candidates must possess either an engineering diploma or a medical degree or a degree in agricultural science, law or economics and commercial sciences. The notice announcing the competitive examination indicates in each case the diploma required for the post, which is determined by the nature of the vacancy.

In Greece candidates for the post of labour inspector must possess a higher technical school diploma (in mechanics, industrial chemistry or electricity) or a diploma in chemistry from the university.

The predominance of technical training is equally clear in countries in which the selection of inspectors is carried out, as was mentioned above, in the light of empirical principles or by means of eliminatory tests

In Great Britain candidates must possess a university degree or some equivalent technical, industrial or scientific qualifications. In a number of countries, such as Switzerland, Norway and Denmark, preference is usually given to persons who have completed a course of technical study.

In France — where the competitive examination, it should be noted, is such as to constitute in itself a guarantee of the technical training of the candidates — the diplomas which entitle a candidate to take part in the examination are extremely varied, most of them being issued by the leading institutions for technical education in the country.

It may therefore be said that as a general rule inspectors are selected from among persons who have completed certain technical studies which enable them to deal competently with the various aspects of the enforcement of labour legislation.

### PRACTICAL EXPERIENCE

The pre-eminence given to technical knowledge in the selection of inspectors is still more clearly shown by the fact that in many countries candidates must offer proof of practical experience in addition to the necessary theoretical training. Experience is considered so important that it is often in itself a sufficient claim to appointment without the necessity for producing any diploma. It should be added that in countries in which diplomas are not required in any case, practical experience is the main criterion of ability to carry out the duties of a labour inspector.

#### *Experience as a Subsidiary Qualification*

As has been mentioned, the regulations of certain countries prescribe that candidates for appointment as inspectors must, in addition to holding certain diplomas or certificates, have acquired a certain practical experience in industrial employment. In many countries, indeed, there are regulations specifying the number of years of service which the candidates must have completed in industry. The duration

of this practical experience in industry is fixed at one year in Germany, two years in Czecho-Slovakia, three years in Yugoslavia and five years in Finland

In other countries, again, no minimum of this kind is laid down and it is merely stated that the applicant must show proof of practical experience, or that account will be taken of experience in selecting candidates. In Luxemburg, for example, all candidates are required to have supplemented their theoretical knowledge by considerable practical experience in medium or large-scale industry. In Switzerland it is laid down that applicants must have occupied a post in industry or, in certain exceptional cases, in an appropriate administrative service. The situation is similar in Sweden. In some of the Indian Provinces a few years' experience is required, whereas in others experience is simply taken into account. The latter is the case also in Greece and Hungary.

The situation in Great Britain in this respect deserves special mention. Candidates are required to show proof of a certain amount of experience, but not necessarily in industry, and in any case the authorities do not seem convinced that experience is essential in all circumstances. A departmental committee set up to study the system of factory inspection in Great Britain in 1930 expressed the opinion that experience gained in an industrial establishment should not be considered as an essential qualification, for the adoption of such a rule "would have the effect of ruling out a number of excellent candidates."

In Ireland candidates must satisfy the Civil Service Commissioners, not only as to their standard of general education, but also as to their practical experience in a manufacturing undertaking and knowledge of factory and workshop conditions, as well as technical training and experience.

It may be of interest to recall that in 1923 the Netherlands Government made a similar point in its reply to the questionnaire sent out by the Office concerning the general principles for the organisation of factory inspection. It stated: "A few years' experience in industry is of great importance, but it is not desirable to insist on this requirement, because otherwise the engineer who feels qualified and suitable for the work of factory inspection will not as a rule, after some years of industrial experience, see any advantage in changing his profession. Insistence on this requirement might simply

result in attracting to the service persons who had failed in industry ”.

It should be noted that these apprehensions are not entirely unfounded. In Poland, indeed, it was found that there was some difficulty in recruiting staff with the necessary high qualifications because one of the conditions for admission laid down in the legislation was an unspecified period of practical experience. It was eventually found necessary in many cases to engage candidates as soon as they had completed their studies.

#### *Experience as a Substitute for a Diploma*

In connection with the question of the standard of education, passing reference has been made to the method of considering long and valuable experience as a sufficient qualification for appointment to the inspectorate, even when as a general rule candidates were required to have completed a more or less definitely specified course of study. It was mentioned that in Great Britain candidates with suitable practical experience might be exempt from the obligation to possess certain diplomas. In Switzerland also experienced persons may be appointed as inspectors even if they have not completed any special course of study.

This system of exemption would seem to have been developed to a particularly high degree in France, where persons who wish to take part in a competitive examination must produce the diplomas or certificates mentioned in the regulations. Exemption from this obligation is granted to. (a) candidates with not less than five years' actual service as officer in the army or navy or as civil servant, provided that the candidate has passed the school-leaving examination or holds an equivalent certificate; (b) candidates who have not less than eight years' practical experience in industry as heads of undertakings, engineers in charge of practical work, foremen, or skilled workers, provided that the occupations in which they were engaged and the shops in which they worked fall within the categories specified by the Minister of Labour.

In Australia (New South Wales) persons are admitted as candidates for the post of factory inspector who can show at least ten years' practical experience as engineering or architectural draughtsmen, clerks of works in building construction, journeymen engineering fitters, electricians or wood-

working machinists, or who have gained any other experience of equal length in industry or commerce.

The substitution of industrial experience for a university degree or other diploma may be considered as being more or less the rule in countries in which inspectors are selected mainly in the light of their practical or occupational knowledge. In this connection it may be pointed out that while in some countries, such as New Zealand and Norway, it is simply stated that special account will be taken of practical experience in the appointment of inspectors, there are many others in which the regulations lay down the length of service which candidates must have had in industry. In Cuba, for example, candidates must submit, along with their application for admission to the competitive examination, a certificate showing the nature of the employment which they held for not less than two years in some public or private undertaking.

It should, however, be observed that a specified period of practical experience is required mainly in countries with specialised inspection services, the members of which require to be acquainted with certain restricted fields of activity only, most of them being experienced technical experts. In Australia (Queensland), for example, persons who wish to obtain an appointment as inspectors of machinery must supply proof of ten years' experience in industry. In the United States (Wisconsin) candidates for the safety and hygiene branch of the inspection service must have had four years' appropriate experience. The corresponding period of practical experience is three years for candidates for appointment as building inspectors or boiler inspectors, and five years for the elevator inspectorate. Similar provisions exist in some other States of the Union.

#### GENERAL CONDITIONS

In addition to the qualifications mentioned above, candidates must naturally possess certain others which, though of undoubted importance, cannot be considered as applying solely to inspection staff. The conditions referred to are of a general nature and apply to any public official. They include such points as nationality, age, health, character, military service, police record, knowledge of languages, etc. The necessity for some of these conditions is obvious; others are justified by considerations that go beyond the immediate



interests of the inspection service. There is therefore no need to stress them and only two need be discussed in slightly greater detail, namely, character and age. With regard to the former, it may be recalled that when the Governments were consulted in 1923 on the general principles for the organisation of factory inspection, the Office reached the conclusion that it was very important "that inspectors should be persons of high moral qualities, able to carry out their duties independently and absolutely impartially and to command the confidence and respect of employers and workers". It sees no reason to change that conclusion. It may simply be mentioned that in certain countries in which the inspectors are recruited by competitive examination the jury for the examination is obliged to take account also of personal qualities and in particular of the character, tact, power of decision, bearing, etc., of the candidates examined.

With regard to the question of the age of candidates, it may be well to reproduce the opinion expressed on this point by the First Regional Conference of representatives of Labour Inspection Services at The Hague in 1935. The problem was raised by the British representative, who drew attention to the difficulties that arose if there was a gap between the age at which students normally ended their studies and the age at which candidates might apply for appointment to the inspection service. During that time, he said, industry was free to make a preliminary selection from among the young graduates and the inspection service was left to choose from among those rejected by industry.

The discussion to which this remark gave rise showed that it would be difficult to draw up uniform principles concerning the minimum age for admission, because in many countries candidates are required to have had a certain industrial experience of varying duration and in others such experience is not required. Moreover the age at which students obtain their degrees differs considerably from one country to another.

There was equal hesitation with regard to the possibility of fixing a maximum age for admission to the inspection staff. Certain delegates considered that it would be desirable to leave Governments free to decide whether a condition of age should be laid down for recruiting inspectors. When particularly qualified persons with long practical experience applied

for appointment the existence of an age limit should not be allowed, in the view of these delegates, to prevent the authorities from giving preference to such experienced candidates. Others objected, however, that in countries in which recruiting is by competitive examination the absence of an age limit would give rise to certain difficulties, because it would be rather difficult to compel persons of wide experience over a certain age to undergo a competitive examination. If, on the other hand, such persons were to be exempt from the normal examination, recruiting would obviously become somewhat arbitrary and criticism would be sure to follow.

It must be admitted that the problem is not easy to solve, because if age limits are prescribed they must depend on the other conditions of recruiting. The question of the minimum age is really identical with the question of the qualifications required of candidates. If candidates are required to have a diploma and industrial experience in addition, the minimum age must in practice be higher than in cases in which only one of these qualifications is required.

Similarly, the maximum age which might be laid down would naturally differ according to whether the actual training of new inspectors for their work was carried out in the inspection service itself, or whether preference was given to persons who were considered to have acquired by experience the authority necessary to carry out the duties entrusted to them. In this connection reference may be made as an extreme example to the State of Massachusetts in the United States, in which persons having the necessary experience may be appointed as inspectors up to the age of 50 years. By way of comparison it may be mentioned that the maximum age is fixed at 27 years in Germany, 30 in Belgium and France, and 32 in Great Britain.

## § 2. — Methods of Recruiting

The methods of choosing from among the candidates are not very numerous. They may, in fact, be reduced to two, that of selection and that of competitive examination. Within each of these there are certain variants which may be considered

## RECRUITING BY SELECTION

The most widespread, but at the same time the most elastic, method would seem to be that of leaving the administrative department concerned free to fill vacancies as they occur. Very often the choice of the person to be appointed is left to the discretion of the head of the department and it is only in rare cases that the task is entrusted to a special recruiting body. It would be rather difficult to say whether steps are taken in every country to ensure that vacancies are made sufficiently widely known.

In Canada the legislation gives the Lieutenant-Governor in Council the right to appoint members of the inspection staff, but in practice this right is exercised through the responsible authorities, who are not guided by any special regulations in making their selection. In New Zealand also the Governor-General is given a free hand in the appointment of factory inspectors. In many countries, including Denmark, Hungary, Luxemburg and the Netherlands, the selection is made by the authorities in accordance with the qualifications laid down in the legislation and their own special needs.

In Switzerland also the authorities are responsible for examining the applications received when a post is advertised as being vacant. In making their selection they collect all the information which might help them in this task, as for instance the opinion given of the candidate by his former employer or by his teachers. This system cannot give rise to any serious disadvantages in that country, for inspectors are appointed for three years only.

In some countries in which all public officials are recruited by a special body, it is naturally that body which selects factory inspectors. This is the case in Japan and also in many of the Provinces of India, where a Public Service Commission is entrusted with this task.

Selection, even although left to the discretion of the administrative department concerned, would seem to offer greater guarantees when it is supplemented by an examination at the end of a period of probation. This is the system in force in Czecho-Slovakia, Estonia, Germany, Greece, Poland and Yugoslavia. As will be seen later, in these countries candidates are appointed on probation and are not confirmed in their appointments until they have completed a more or less systematic course of training followed by a qualifying examination.

The situation would seem to be similar in the U S S R , in which inspectors, before being permanently appointed, must pass an examination before a board set up by the central committee of each trade union

Finally, it may be noted that in Rumania every candidate for a public post must pass a qualifying examination before engagement

#### RECRUITING BY COMPETITIVE EXAMINATION

In a certain number of countries labour inspectors are recruited by competitive examination and this method probably provides a surer guide to the ability of the various candidates. These examinations are organised under special regulations which generally define all the material details of the recruiting operation. As a general rule there is a written examination and an oral examination, but the relative importance and the nature of the two types of tests differ appreciably from one country to another. In some cases the purpose is to bring out the intellectual ability and degree of mental training of the candidate, whereas in others it is intended to discover whether or not he possesses certain definite knowledge. The regulations may therefore simply indicate in outline the subjects to be covered by the tests, or they may contain a very detailed programme which makes perfectly clear the points on which the candidates are required to have thorough knowledge.

Without going into details concerning the body responsible for organising the examination, the composition of the jury, etc., it will suffice to indicate below the main features of the competitive examinations in a few countries.

In Belgium the examination includes a written test and an oral test. The former comprises an essay in French or Flemish and the drafting of a memorandum on a given subject concerning the preventive and protective measures to be taken in dangerous, unhealthy or disagreeable industries, or with accident prevention in general. The oral test, which would seem to be more important, covers applied mechanics, industrial chemistry, electricity and its industrial uses, labour legislation in general, and an oral recapitulation and discussion of the memorandum drawn up as part of the written test.

In France the written tests include the following. (a) an

essay on questions connected with the legislation to be enforced by the labour inspectors and the rudiments of administrative and criminal law, (b) an essay on questions of occupational hygiene; (c) an essay on engineering, electricity or accident prevention. These written tests serve to eliminate candidates; only those who obtain a minimum number of points fixed by the jury (50 to 60 per cent of the possible) are admitted to the oral test. The oral test includes questions on the following points (a) legislation to be enforced by the labour inspectors, (b) rudiments of administrative and criminal law, (c) general questions of labour and industrial legislation, (d) rudiments of occupational hygiene, (e) rudiments of engineering electricity and accident prevention; (f) a practical test in occupational hygiene, (g) a practical test in engineering, electricity or accident prevention; (h) a practical test in industrial work. (This last test is compulsory only for candidates who are exempt from producing a diploma or certificate of practical experience in industry.)

In Italy the examinations for candidates for the inspectorate consist of three written tests and an oral test. The written tests serve to eliminate candidates and are of more importance than the oral ones in the final decision. The subjects of the written tests differ according to whether the candidates are to be attached to a technical service, the medical branch or the administrative branch of the inspectorate. Candidates who are certificated engineers are tested in technical physics, applied mechanics, industrial technology (with reference to the metal, engineering, textile, wood and milling industries), labour legislation and corporative law. Candidates holding the degree of doctor of medicine are tested in general and industrial hygiene, industrial pathology and labour legislation. In addition to the subjects included in the written tests, the oral tests cover the following subjects. In the case of candidates for a technical post, the rudiments of the corporative economic system, the administrative organisation of the country and statistical method, in the case of candidates for a medical post, the rudiments of industrial technology, corporative law and statistical method.

In Peru candidates are first tested orally, the questions are prepared by the Department of Labour and cover the general principles of social legislation and certain problems of national labour law. The written test consists in the study

of a complaint submitted by workers ; the candidate must analyse the complaint and indicate the action to be taken.

In some States in the United States of America the entrance examination is generally organised by a special body and comprises a written and an oral test, but these tests differ considerably from those in other countries. The oral test can scarcely be said to be an examination because it is merely an interview intended to enable the jury to gauge the personal qualifications of the candidate. Moreover, the written test does not call for any great specialisation on the part of the candidates. In the State of New York the test is intended to show whether the candidate has the necessary ability and some knowledge of practical working methods in industry. In Massachusetts the written test deals with the legislative provisions which candidates will later have to apply. It is probable that the tests used in other States are also intended mainly to bring out the general ability of the candidate and enable those who are entirely unfitted for appointments as inspectors to be rejected. It may be noted that those who pass the examination successfully are merely placed on a list of eligible candidates, the final selection remains in the hands of the authorities.

In Great Britain the system is somewhat similar. Candidates with the necessary qualifications are invited by the Civil Service Commission to sit for a written examination in English composition (including the drafting of a report), and to appear before a Selection Board for an interview. In its decision the Board takes account of the experience, past record and personal qualities of candidates, and also of testimonials from persons having direct knowledge of the candidate's previous activities. It should be noted that candidates for the technical branches of the factory inspection service are not required to pass an examination, as they are admitted on the basis of their scientific and practical qualifications.

In Cuba the examination is a written one only, and a candidate who obtains 51 per cent. of the possible marks is placed on a waiting list from which future inspectors are chosen. Candidates are required to reply in writing to eight questions drawn by lot from a list prepared by the competent Government department. Of these questions, six concern the existing labour legislation, one is a general question concerning the work of inspection (e.g.: What is the purpose of labour

inspection? How should an inspection be carried out? How should a report be drafted? etc.), and one requires the solution of a simple arithmetical problem

In Ireland recruitment is by competition and interview before a Selection Board

### § 3. — Probation and Training

The period of probation and training is undoubtedly, in conjunction with the qualifications required of candidates, the most important factor in the recruiting of inspectors. The authors of the 1923 Recommendation stressed the value of following certain definite principles on this matter when they urged that "inspectors, on appointment, should undergo a period of probation for the purpose of testing their qualifications and training them in their duties, and their appointment should only be confirmed at the end of that period if they have shown themselves fully qualified for the duties of an inspector." On this point it may be noted that the regulations in the different countries show a striking similarity which it would be difficult to parallel in any other field. Although the principles are more or less universally adopted, there are however certain appreciable shades of difference in the methods of applying them. These differences are fairly obvious with regard to the length of the probation period; they are still more important in connection with the methods of training or the necessity for passing a further examination at the end of the period of probation.

#### LENGTH OF THE PROBATION PERIOD

It is scarcely necessary to recall that during the probation period the candidate is being tested and at the end he may be dismissed without further formality if his work is not satisfactory. As a general rule probationers do not immediately receive the initial salary of an inspector, so that their final appointment also means promotion. There are, however, exceptions to this rule. In some States of the American Union, for example, candidates who have completed the probation period do not require to be formally confirmed in their posts; if they are retained in the service they are taken to be permanently appointed, which means that from the

outset they are in the same situation as an inspector on the permanent staff. In France also probationers receive an annual allowance equal to the salary of the lowest salary grade in the inspectorate. In most cases, however, probationers do not receive the same salary or advantages as those who are regularly appointed. In some cases, even, they are not entitled to any salary; this is the position in Germany, where only those who require it are paid a subsistence allowance during the probation period, and in Venezuela, where they receive no salary.

It seems, therefore, that the length of the probation period should be considered from two points of view: it must be long enough to enable the candidate to be adequately trained and tested, but on the other hand it should not be so long as to leave him for an undue period in a situation of uncertainty.

The actual length of the probation period varies considerably from country to country. It is shortest in Venezuela, where it may be between 30 and 60 working days and in some States of the United States, where it is from three to six months. It is six months in Australia (Queensland), Belgium and Italy, one year in Czecho-Slovakia, France, Greece, New Zealand and Rumania; two years in Denmark, Great Britain, certain of the provinces of India, Ireland, and the Netherlands, three years in Germany and Yugoslavia. In the last-named country candidates who have been employed for not less than five years in large undertakings may be exempt from probation. In Hungary the length of the probation period is not specified.

In Poland the probation period falls into two distinct sections. Candidates must undergo a period of training which, as a general rule, lasts for one year but which may be extended for a further period of not more than two years. Before becoming a recognised probationer, however, a candidate is taken on trial for three months so that the authorities may have a general idea of his capabilities. It is only after that preliminary period and on the receipt of a satisfactory report from his superiors that the candidate is admitted by the competent Minister as a probationer. When he is so admitted the three months are considered as part of the normal probationary period.

In conclusion, it may be noted in this connection that the Conference of Representatives of Labour Inspection Services



at the Hague concluded that the length of this period must depend on the conditions of recruiting and that it might be reduced when the examination which candidates had to pass was very difficult and gave a good idea of the extent of their knowledge of the regulations they had to apply. The case of Belgium was cited in this connection; the probation period was originally two years in that country, but it was reduced to six months when the competitive examination became stiffer. A similar reduction was also made in Italy.

### METHODS OF TRAINING

In the absence of sufficiently definite information, it is difficult for the Office to give anything like a complete picture of the methods that may be employed for completing the training of young inspectors. The absence of information on this point is due largely to the fact that in many countries there are no detailed formal regulations for the systematic training of probationers. It would seem that this delicate task is generally entrusted to the more experienced inspectors and that the only method employed for initiating candidates in their new duties is for them to accompany other inspectors on their daily rounds. This method may be excellent, but it is not so simple as to dispense with rules altogether. In certain countries, therefore, measures have been taken to secure uniformity and to ensure the scientific training and gradual development of the abilities of new inspectors.

This is true, for example, of Germany, where the training of new inspectors would seem to be most systematically organised. The minimum length of the probation period is three years, of which eighteen months are devoted to practical training and eighteen months to scientific training. During the former period the probationer is initiated into all the activities of the inspectorate under the supervision of an experienced inspector. Towards the end of that period he must draw up two reports on subjects selected by his chief. During the second part of the probation period the probationer is attached to an inspection office situated at the seat of a university, where he must attend courses and lectures on public law, the industrial code, labour law, political and social science and industrial hygiene. In so far as may be found necessary, the probationer must also study certain technical

subjects and chemistry. During the last six months of this period the probationer must prepare, within a period of four weeks, a study on some question concerning the work of inspection. If this study is considered satisfactory the probationer may then apply to sit for the qualifying examination.

In some States in the American Union the methods of training new inspectors are entirely practical. First of all, the probationer spends a few weeks visiting the undertakings in his future area in company with an experienced inspector. For the first few days he merely watches the procedure followed by the inspector, but he is soon required to carry out the work himself under the supervision of his older colleague. Later, when he is allowed to carry out his inspectorial duties alone, the chief district inspector accompanies him from time to time to make certain that he has fully understood his responsibilities and prepares his reports correctly. For the rest, new inspectors are merely required to assimilate the instructions issued to them in a manual containing full details regarding the work required of them. This rapid method of initiation might well be considered somewhat sketchy if it were not followed by supplementary technical training in which every possible means is employed for extending the professional knowledge and ability of the inspectors throughout the whole of their career. Various methods are used for this purpose. Special theoretical and practical courses are organised for inspectors with the assistance of public educational institutions; staff meetings are called during which the inspectors may exchange views and help each other by relating their practical experiences; periodical bulletins are issued on subjects connected with the work of inspection; inspectors are urged to attend lectures on subjects connected with their duties or are granted special leave to attend regular courses on such subjects as industrial hygiene.

In Great Britain also the training of new inspectors begins by a series of visits spread over several weeks under the supervision of experienced inspectors. They are encouraged to draw up reports on what they have noted during these visits of inspection. Special demonstrations and lectures are also given in industrial museums. Their training is completed by special courses, generally on the subjects on which they will be examined at the end of the qualifying period.

It may also be mentioned that in Poland, where young

inspectors are trained by the older members of the service, refresher courses on various subjects are organised from time to time according to requirements

#### EXAMINATIONS ON CONCLUSION OF PROBATION

In most countries a report on the ability and conduct of the candidate is submitted by the responsible chief on the conclusion of the probation period, together with proposals as to the confirmation of the candidate's appointment or his dismissal. The submission of this report becomes almost a mere formality when the candidates are selected with proper care, and such a method of terminating the probationary period is particularly appropriate where candidates are recruited in the first place by means of a difficult competitive examination. When, however, admission to the probation period is not the result of a severe examination it would seem desirable for probationers to pass an examination to show whether they have reached the desired standard of training.

Such examinations have been introduced in several countries. In Estonia probationers are required at the end of the probation period to pass an examination organised by the competent department of the Ministry of Social Affairs. In Yugoslavia also a similar examination is held.

In Greece inspectors with provisional engagements have to pass a test after one year of satisfactory service. In Venezuela probationers, at the end of the probation period, have to pass an examination before a board appointed, in each case, by the competent minister.

In Czecho-Slovakia candidates undergo at the end of the probation period an oral examination covering the following subjects: general constitutional principles of the country, organisation and powers of the public authorities; legislation concerning factory inspection, labour legislation and the Industrial Code. A candidate who fails may sit for the examination between 6 and 12 months later at a date fixed by the jury.

In Australia (New South Wales) inspectors cannot be promoted above the salary fixed for the second year of service unless they have passed an examination in the following subjects: administrative rules and procedure, protection of

machinery, causes and prevention of accidents, industrial hygiene and judicial procedure in cases relating to inspection.

In other countries the examination at the end of the probation period is so carefully organised that its value as a means of selection is equal to that of the competitive examinations organised in other countries for entrance to the inspectorate. In such cases, however, there is the risk that considerations of equity may lead the jury to retain in the service candidates whose ability is not entirely satisfactory, particularly if the qualifying period is a long one. Apart from this reservation, which may perhaps not be justified, it must be admitted that the tests which have to be undergone by probationers in the countries concerned are just as severe as the examinations which candidates have to pass for initial admission to the service in other countries.

In Germany, for example, probationers are required to pass a particularly complex examination. The preliminary condition for admission is, as was mentioned above, that the candidate should have submitted a satisfactory technical study prepared within a period of four weeks. If the candidate is then permitted to sit for the examination the jury indicates a further subject of a legal nature on which he must prepare a thesis within a period of four weeks. In addition he must submit two essays, one on a technical subject and the other on a legal subject, each of which must be written in one day. If he successfully passes the written tests the candidate then undergoes an oral test, in the course of which he is questioned on all the points mentioned above in connection with the training of probationers and must give an analysis of the documents contained in a file submitted to him three days before the examination. If he fails the candidate may attempt the examination again.

In Poland the examination at the end of the qualifying period includes a written test and an oral test. The former, which is intended to eliminate certain of the candidates, consists of one or two essays on subjects selected by the jury connected with the practical work of labour inspection. The oral test deals with public law, the structure and powers of public authorities, the elements of civil law, criminal law and procedure, labour legislation, social insurance, accident prevention, industrial hygiene and the rudiments of industrial organisation and social protection in Poland. A candidate

who fails may sit for the examination again within a period of from 3 to 12 months

It may be mentioned finally that the system in force in Great Britain is peculiar in that the probation period comes between two examinations. Candidates who pass a qualifying examination are selected by means of a competitive interview and the successful candidates are required to pass another qualifying examination before their appointment is confirmed. This second examination consists of written and oral tests on questions on labour legislation and industrial hygiene

#### § 4. — Status and Position of Inspectors

In considering the various problems connected with the selection of a capable and conscientious staff brief reference must be made to the conditions of service of labour inspectors, for this material aspect of the question is an important psychological factor in determining the quality and the spirit of the inspectorate. The importance of this point was naturally recognised by the 1923 Conference, which laid down the following principle: "The inspectorate should be on a permanent basis and should be independent of changes of Government, the inspectors should be given such a status and standard of remuneration as to secure their freedom from any improper external influences and should be prohibited from having any interest in any establishment which is placed under their inspection." As the Office sees no reason to change either of these principles it will suffice to refer briefly to one or two points connected with stability of employment and conditions of service.

#### STABILITY OF EMPLOYMENT

In the great majority of countries <sup>1</sup> labour inspectors of the group at present under discussion are public officials with all the advantages granted to such persons in the different countries concerned. It is not the purpose of the present study to consider the guarantees which should be offered by a satisfactory code of regulations to those working under it, it may, however, be said that civil servants normally enjoy

<sup>1</sup> It would appear that in Canada and Peru labour inspectors are not subject to the ordinary civil service regulations. In Cuba it is now proposed that they should be given life contracts.

stability of employment They are appointed to permanent positions, which means that unless they are affected by some disciplinary measure due to a serious failure to carry out their duties they cannot be removed from their posts but remain in them until they have reached a certain age limit. Exceptions to this rule may be met with only in Finland, where inspectors are appointed for five years, and in Switzerland, where Federal civil servants are always appointed for the duration of an administrative period, which is three years, as a rule, however, their appointments are renewed It should further be noted that even in the United States of America, where a change of Government may involve a periodical change in a section of the staff of the civil service, those who are recruited by competitive examination may not be removed from their post on political grounds

It follows from what has been said that if a civil servant behaves and works satisfactorily he cannot be required to leave the service until he has reached the statutory age limit This is generally fixed at 60 or 65 years, but there are countries in which active service ends at a lower or higher age In some of the Provinces of India, for example, the age limit is 55 years, and in France it is 57 years In some States in the United States, on the other hand, retirement is optional at 60 and does not become compulsory until the age of 70 years.

Summing up, it may be said that labour inspectors enjoy stability of employment as civil servants and that this situation is so universal that it is difficult to imagine any other solution which would give them a satisfactory status from the point of view of their personal interests and of those of the inspectorate

#### CONDITIONS OF SERVICE

In speaking of the conditions of service of inspectors a certain degree of caution is required, for national ideas and habits vary so much that at present it would be going too far to suggest any uniform rule to be laid down in international regulations. It is clear, moreover, that a detailed analysis of conditions of salary, promotion, hours of work, annual leave and pension rights would scarcely be possible without examining the conditions of service of civil servants in general, which would be quite outside the scope of the

present Report. Even if one wished to do so it would not be easy to reach conclusions of real value by comparing, for example, the salaries earned by inspectors in the different countries. The salary figures available would, if placed side by side, offer no sound basis for comparison unless at the same time one examined in detail the purchasing power they represent, and that is a task which is made still more complex by the constant fluctuations in exchange rates.

It is therefore impossible to do more than mention certain general principles which are of fundamental importance

With regard to the inspectors' salaries, it is desirable in the first place that they should be sufficiently high to safeguard the inspecting staff against the temptation to supplement by irregular means an income which they consider inadequate. Moreover, their remuneration should not be lower than that paid in other national services to officials with the same standard of training holding posts with similar responsibilities. Indeed, it would be well, in order to ensure a supply of suitable candidates, to take account of the salaries offered to young engineers in industry when fixing the initial salaries of labour inspectors.

For reasons of equity, and more especially in order to attract candidates of a good class to the inspection service, it is extremely desirable that inspectors should be able to rise to quite high grades in the civil service scale. The longer the scale of salary increments and the greater the possibility of gradual promotion the easier it is for the authorities to ensure zeal and devotion to duty among the inspectors. Moreover, if the individual inspector has an assured social status this cannot fail to add to the prestige of the service as a whole — a fact which has a certain influence on the development of relations between the inspection service and the parties concerned, more especially the employers.

It is therefore important that inspectors should have considerable possibilities of promotion. There can be no question of laying down rules for the practical application of this principle, for the only fundamental rule is that labour inspectors should, from this point of view, be in exactly the same position as civil servants in other branches of the public administration. The same rules should apply also as regards annual leave and the acquisition of pension rights.

There is one condition of service, however, with regard

to which it does not seem possible to achieve complete assimilation between labour inspectors and other public servants. It is indeed difficult to fix exactly the hours of work of these inspectors, for they are required to carry out many visits of inspection outside normal working hours, so that the extent of their activities can be measured more accurately by the number of their visits and other actions than by the hours of duty. That is why, although certain countries regulate their hours of work, others have not fixed any daily or weekly limit. In France, for instance, hours of work are regulated according to the requirements of the service, it being understood that inspectors are at the disposal of those subjected to their supervision even when spending the evenings in their own homes; they are also obliged to preside over many joint boards which can meet only in the evenings. Moreover, inspectors are not permitted to leave their places of residence even on a Sunday or a public holiday without the permission of the divisional inspector, unless the needs of the service require them to do so. In Great Britain also there are no special rules concerning hours of work. Factory inspectors are presumed to be in their areas from 9 a.m. to 5 p.m., and it is further presumed that they make night inspections at least once a week and at any other times when they are called upon to do so by their superiors.

### AUXILIARY INSPECTORS

In a number of countries the conclusion has been reached, in the light of experience, that a staff composed solely of inspectors with first-class qualifications cannot do the work as well as might be desired, because part of the time of the inspectors is taken up by tasks of minor importance which could equally well be performed by officials with considerably lower qualifications. The necessity for relieving the inspectors of some of their duties proved essential in some countries in which industrial development and the introduction of new manufacturing methods brought about a considerable increase in the demands for action by the inspectorate, while, at the same time, the growth of labour legislation gave them a more extensive field of activity. The difficulties resulting from the increase in the volume of the inspectors' work led several Governments to appoint auxiliary inspectors, who are nor-



mally entrusted with duties involving fewer responsibilities. It was found desirable to make a division of labour whereby the supervision of certain establishments of less importance or the supervision of the enforcement of certain clearly specified legislative provisions was entrusted to officials who did not have the same standard of education as required by inspectors of the first grade but had nevertheless sufficient knowledge to carry out the tasks required of them

There are also other reasons which induced the inspection services to adopt a system of division of labour. The employment of less highly qualified officials, who could be paid a lower salary, enabled countries to increase the number of their inspectors more easily. There were also psychological and social reasons in favour of the addition to the inspectorate of persons who were more accustomed to dealing with those among whom the inspectors carry out their work and were therefore able more easily to gain the confidence of the workers in the establishments they supervised. Certain other reasons, such as the extent of the territory or the very large number of workplaces to be supervised, led some countries to appoint a special category of inspectors who, while not actually belonging to the regular inspectorate, work under its supervision or are associated in its work in accordance with clearly defined rules

According to their training and their position with regard to other members of the inspectorate, these auxiliary inspectors, whose titles vary considerably from country to country, may be classified in three groups (*a*) inspectors with an intermediate degree of education, who may be called inspectors of the intermediate grade, (*b*) worker-inspectors, (*c*) inspectors not forming part of the inspectorate but associated in its work. These groups will be examined successively and a brief outline given of the characteristic features of their position in the different countries

### § 1. — Inspectors of the Intermediate Grade

In a few countries the inspectorate includes a comparatively large number of officials recruited from among persons with an intermediate degree of education. In some cases their duties are the same as those of the regular inspectors, whereas in other cases they are restricted in various ways,

and the exercise of certain administrative powers is reserved for the regular inspectors. Sometimes they are the only persons who collaborate directly with the inspectors. In countries in which there are worker-inspectors as well, they occupy an intermediate position, and it would seem from the international point of view that "intermediate" is the most satisfactory word for defining their position.

In France the members of this group are known as assistant inspectors. They have the same powers as inspectors, but they exercise them under the responsibility and supervision of the latter, and they do not have a special area for which they alone are responsible. They are recruited by competitive examination from among persons who have completed the intermediate stage of technical or general education. Persons without diplomas or certificates may also be admitted to the examination if they have served for not less than two years in certain departments of the public service or have not less than eight years' practical experience in industry. The subjects of examination for assistant inspectors are the same as those for inspectors, but the standard required is lower, and the examination lays stress on practical knowledge. The rules concerning the situation of assistant inspectors are identical with those concerning inspectors.

In Italy the corporative inspection service includes a considerable number of assistant inspectors (133 in 1935). Their duties are fixed by the district inspector to whom they are attached, who is entitled to entrust them with the supervision of certain categories of undertakings or of the application of certain legislative provisions. Assistant inspectors are recruited by competitive examination. Admission to compete is reserved to candidates who hold one of the following diplomas, according to the nature of the vacancy: a diploma of an institute of vocational training of the third grade, or of a royal intermediate agricultural school, or of the commercial and accounting section of a technical institute, or of the advanced course of a technical institute for one of the following sections: industry and handicrafts (industrial expert, technical expert, or master craftsman), commerce (accounting and commercial expert), or agriculture (agrarian expert). The written examination includes an Italian essay and the treatment of a question concerning labour legislation and corporative law, and a question on industrial technical methods (in the wood,

metal, or textile industry) The oral test includes, in addition to the subjects mentioned, accounting, arithmetic, and a rudimentary knowledge of the administrative organisation of the country and of statistical methods The assistant inspectors remain on probation for six months, just like the regular inspectors, and their conditions of employment are exactly the same in other respects (status, promotion, pension, etc )

In the Netherlands there is an intermediate grade of inspectors, comprising 25 officials in 1935, who are known as technical officials They are recruited from among persons who have followed a technical course in a secondary school They are chosen because of their specialised knowledge, and the authorities try to appoint persons with a thorough knowledge of a given industry to a district in which that industry predominates. They are concerned more particularly with accident prevention, although they are also entitled to report infringements of any kind They have not the right to issue injunctions, as this is reserved for the chief inspectors in the various districts. These technical officials, like the other inspectors, are appointed for life, and their conditions of employment are exactly the same as those of other public servants.

In Greece the inspectorate includes a fairly large number of assistant inspectors, recruited from persons who have passed through a secondary school, a secondary commercial school or a secondary technical school They assist the inspectors in the performance of their duties and are specially entrusted with the supervision of the protection of women and young persons, their hours of work and weekly rest. If their services are satisfactory, these assistant inspectors may be promoted to the rank of inspectors of trade unions and labour disputes.

In Estonia there are also assistant inspectors, but they do not constitute a distinct grade, as district inspectors are selected from among assistant inspectors who have completed a course of higher education and served for two years or more. There are, however, certain assistant inspectors who are appointed after they have worked for two years or more in industry, although they have only completed the intermediate grade of education (certificate of a secondary school or equivalent technical school). These persons are entrusted with the same duties as their colleagues, but as they do not possess higher

educational qualifications they obviously cannot be promoted to the rank of district inspector

In Germany an intermediate grade of labour inspectors was established after the war and was originally intended to consist solely of candidates selected from among the workers (they will therefore be dealt with in the following section), but since the establishment of the National-Socialist régime it would appear that they are recruited entirely from among persons having completed the intermediate grade of technical or commercial education

In Czecho-Slovakia there is a category known as "higher auxiliary technical officials", consisting of persons who have completed their secondary education, preferably in technical subjects. As this grade consists entirely of women it will be dealt with in a later section

## § 2. — Worker-Inspectors

The employment of former workers as auxiliary inspectors is a recognised practice in many countries, but it has not been retained in all the countries in which the system has been tried. The admission of representatives of the working class to the inspectorate was not intended solely to increase the efficiency and elasticity of the work of the inspectorate, more particularly in the small industrial and commercial undertakings. A more important reason for this step was the desire of the organised workers to see certain of their representatives associated in the work of inspection, because they considered that this would give them fuller opportunities of ensuring the enforcement of labour legislation. The efforts of the workers' organisations in this direction met with success, especially in countries in which industry is highly developed, and it was finally recognised that these worker-inspectors constituted a very valuable link between the inspectorate and the working class. It should be noted, however, that the view taken of the value of the services rendered by these persons was sometimes fundamentally changed as the result of the adoption of a new policy by certain Governments, so that three important European States have now abandoned the experiment of appointing workers as inspectors. There are, however, still a number of countries in which the experiment would seem to have been successful, and in spite of the fact that certain

countries have abandoned it, it may be of value to give a survey of the systems adopted in different countries, including those which no longer practise this method

In Belgium the participation of former workers in the tasks of the inspectorate has proved extremely valuable, and has been extended in recent years. Since its reorganisation in 1936 the Belgian labour inspectorate includes among its services a technical service and a social service, both of which employ a large number of former workers. In the technical service these persons are known as technical workers' delegates, and are responsible for inspecting certain specified undertakings from the point of view of health and safety, co-operating in reporting on accidents and determining their causes, and notifying their superiors of any offences which may come to their notice. They work under the supervision and responsibility of the regular inspectors responsible for the protection of the workers, and the latter alone may take such measures as may be required in different cases. When the matter is urgent, however, these delegates may take such measures as they consider necessary, provided that they immediately notify their chiefs. They are recruited from among workers who have had not less than ten years' experience in the branch of industry in which they are to be employed as inspectors. Their age at the time of appointment must be between 30 and 48 years, but the minimum age may be reduced to 25 years in the case of candidates who have a diploma from a recognised industrial school. Before being appointed they must successfully pass a qualifying examination. In the social service there are a certain number of supervisors responsible for ensuring the enforcement of social legislation and more particularly the legislation concerning the 8-hour day, the employment of women and children, the weekly rest, works regulations, the payment of wages, old-age pensions, family allowances, etc. These supervisors are recruited by competitive examination from workers or salaried employees who have worked for 10 years or more in one or more undertakings subject to the supervision of a social service. The examination consists of a written test comprising an essay (narration, descriptive letter, or report) and a few simple arithmetical and geometrical problems, and an oral test on the interpretation and explanation of the statutory provisions which the inspector will have to apply. Both

delegates and supervisors are appointed for life. It should be noted that they are not permitted at the same time to hold office in any trade union

In the Netherlands the inspection service includes a considerable number of supervisors who are generally recruited from among the more outstanding members of the trade union movement. In selecting them care is taken to see that they represent different branches of the movement and different occupations. Once they are appointed, however, these officials are considered as being entirely independent of the trade unions to which they belonged. Their duties in the inspection service are restricted to supervising certain simpler provisions of the legislation, such as those concerning hours of work, etc., but in these activities they possess all the powers conferred by law on labour inspectors

In Poland the labour inspectors are assisted in their work by assistant inspectors who have the ordinary powers, except that they are not allowed to draw up official reports, issue orders or take decisions. The assistants inspect only those undertakings allotted to them by their superiors. They are recruited from among persons who have worked for not less than five years as manual workers, craftsmen or technical or commercial employees, two of those years must have been spent in the areas in which they are to act as assistant inspectors. Each candidate must, in addition, have completed his elementary education and must know the principles of labour protection and the tasks of the inspectorate. After a probation period of three months, candidates are tested in these matters by the district inspector to whom they are attached. They are engaged under a special contract similar to that of a private salaried employee

In Czecho-Slovakia the "subordinate auxiliary technical service" consists of inspectors recruited from among persons who have worked in industry as manual workers or salaried employees and who have a degree of education slightly higher than that given in the elementary schools. These auxiliary inspectors are generally former members of works councils or former shop stewards. They have the position of civil servants and are confirmed in their appointments after a probation period of not less than three years, provided that they pass a qualifying examination consisting of an oral test on various subjects connected with their future activities. Their main

task is to exercise supervision over workshops in the handicrafts and over shops and places where home work is carried on. They are required to secure compliance with the main provisions of the Industrial Code and with certain of the more elementary regulations concerning health and safety.

In Sweden some of the tasks of the inspectors are carried out by sub-inspectors recruited from among persons with a theoretical training in engineering and electricity of the standard required of a chief engineer, and with wide practical experience in those fields. These sub-inspectors are civil servants carrying out their work on their own responsibility but subject always to the instructions of the district inspector.

In Finland the ordinary inspectors are assisted by worker-inspectors recruited from among persons who have completed their elementary education, have some knowledge of protective labour legislation, and have at least five years' experience of work in industry. The most representative national organisation of workers is consulted as to the qualifications of candidates. The worker-inspectors act under the instructions and direction of the inspector to whom they are attached and he alone has power to take any action against employers who infringe the legislation.

In Estonia the legislation makes provision for the employment of assistants recruited from persons who have completed their elementary education and have worked for not less than two years in undertakings subject to inspection. They act under the direction and supervision of the district inspector and are not permitted to take any executive measures in matters of hygiene or safety unless the employer concerned or his representative consents.

It should be added that in Luxemburg a Bill provides that engineer-inspectors shall be assisted by a certain number of worker-supervisors, to be appointed for four years from a list of twice as many names by the Superior Council for Workers' Social Protection. These worker-supervisors, whose appointments may be renewed, must have worked for more than ten years in one or more branches of the industry which they are to cover and be able to show a sufficient acquaintance with social legislation and regulations.

It will be clear that the methods of recruiting in the systems mentioned are no more uniform than those dealt with in the preceding section, the methods of recruiting assistant in-

spectors are always very similar to those for recruiting ordinary inspectors in each country. There is no need to go into details of the various possible methods in view of the survey given in the preceding section, but there are two points to which special attention may be drawn

According to the view taken in several countries, as the task of the worker-inspectors is, to some extent, to act as a link between the inspection service and the workers, the question arises whether the workers' organisations may appropriately be consulted on the choice of suitable candidates. The information at the disposal of the Office is by no means explicit on this point, but it is certain that in a few countries at least the trade unions are consulted as to possible candidates. In such cases, however, measures are always taken to ensure that the candidate after appointment is quite independent of the trade union atmosphere in which he formerly worked. In any case, if appointment is by competitive examination or dependent on a strict test, there is little risk of the worker considering it as a mere reward for certain political or other services, and he will therefore not feel the same indebtedness to the organisation which proposed his appointment.

The other question concerning worker-inspectors is that of the duties which should be assigned to them. There can be no doubt that, as they do not possess the necessary degree of training, these officials cannot be entrusted with all the tasks of an inspection service and that their powers must therefore be restricted. In practice, there are two types of restrictions: their field of activity may be a narrow one, or the powers they are allowed to exercise may be limited, or both of those restrictions may be imposed simultaneously. The narrower their field of activity, however, the less need there would seem to be to restrict their powers. If these inspectors visit only smaller workplaces or are responsible only for the enforcement of provisions with regard to which there is little call for the exercise of individual judgment, it would scarcely be desirable to limit their powers to any great extent, as, for example, by refusing them the right to draw up official reports on infringements or to issue injunctions in the case of obvious offences.

With regard to the countries in which the system of worker-inspectors has been abolished, it may be noted that in two of them the principle of employing assistant inspectors has



not been abandoned and the category has not been abolished, but the standard of education required of candidates for posts of this kind has been raised to that of the intermediate schools

This is the case, for example, in Germany, where former workers were engaged as inspectors some time before the war, though it was more particularly after 1919 that large numbers of the more intelligent workers were appointed to the inspectorate on the suggestion of the trade unions. In Prussia, especially, very detailed regulations were drawn up in 1926 concerning the recruiting and training of supervisors, who were recruited from persons with not less than ten years' experience in industry or commerce. Before being admitted to the service they had to pass an examination consisting of a German essay, the solving of a few simple arithmetical problems, and an oral test concerning the powers of various administrative authorities and the scope of the more important labour laws. After a probation period of three years, the candidates passed a qualifying examination consisting of three essays (one to be written at home) on subjects concerning the work of the inspectorate, and an oral test covering all branches of labour legislation. These supervisors were responsible for the inspection of smaller undertakings and rendered particularly valuable services in the protection of persons engaged in home work.

In Italy the course of evolution was similar. The inspection staff at first included assistant inspectors recruited from foremen and workers with not less than five years' practical experience who had attended certain courses in a vocational or industrial school. When the inspectorate was reorganised in 1932, however, these assistant inspectors were replaced by sub-inspectors who belong to the intermediate grade as defined in the preceding section.

It may also be mentioned that in Great Britain the factory inspectorate included from 1891 onwards a number of inspectors' assistants who were responsible more particularly for inspecting "workshops". Their assistance, however, would not seem to have given the desired results, because in 1920 the decision was taken to make no further appointments of this kind. The existing assistants whose qualifications were sufficient were appointed inspectors. The main reason for the decision was that the men themselves were dissatisfied with the standard of work entrusted to them and also with

their prospects of promotion. Another reason for dropping this experiment was that the trade unions did not approve of the subordinate position of these inspectors' assistants and the limited powers granted to them. The authorities, on the other hand, took the view that persons invested with the full powers of a factory inspector must have reached a high standard of education.

It may be recalled in this connection that when the Recommendation was being drawn up by the 1923 Conference, there was an animated discussion on the question of the admission of workers to the inspectorate, but no definite result was reached. The German workers' delegate, supported by the Austrian workers' delegate, submitted an amendment to the draft text proposed by the Committee of the Conference, in which no mention was made of this problem. The amendment was to insert the following clause in the text. "In order to gain the confidence of the workers in factory inspection it is desirable that qualified men and women workers should be eligible for the posts of assistant inspectors and that they should enjoy opportunities of promotion. Trade unions should be entitled to propose them, but after appointment they should be independent of their unions." The author of the amendment explained that workers should be appointed to the inspection services as assistants and that if their work was entirely satisfactory they should subsequently be appointed as regular inspectors.

This proposal was received with some suspicion by the delegates of the other groups, and it was the British Government representative, who happened to be Chairman and Reporter of the Committee, who led the opposition. He pointed out, in the first place, that the experience of Great Britain with inspectors recruited from among the workers was not very encouraging, as it had generally been found that the standard of work of these officials did not reach the desired level. He also objected that the inclusion of trade unionists in the inspection service was contrary to the principle of impartiality whereby inspectors should be selected neither from among employers nor from among workers, but should represent the State alone, which seeks to maintain the balance between the two parties. The majority of the Conference accepted this point of view and the amendment was rejected by 55 votes to 26.

Before concluding this section, it should be mentioned that what has been discussed above is simply the question of the appointment of workers as auxiliary inspectors. The picture must be completed by referring to certain countries in which the practical possibility exists for representatives of the working class to stand as candidates for appointment as inspectors with full powers.

In France, for instance, as already mentioned, the competitive examinations for the inspectorate are open to candidates who do not possess a university degree, provided they can show that they have had eight years of practical industrial experience in certain occupations or branches of industry specified by the Minister of Labour.

In Great Britain, as already mentioned, the requirement of a university degree or some equivalent qualification may be dispensed with in the case of a candidate with suitable practical experience. Workers are appointed to the inspectorate if of the necessary standard and this method of recruitment has been frequently used.

In Canada many former workers or foremen are members of the inspectorate and it would appear that until recently the high proportion of inspectors selected from the working class was one of the outstanding features of the inspection services in that country.

In Australia (Queensland) it would seem to have been the usual custom to recruit inspectors from among skilled workers in certain trades with a wide knowledge of the conditions of work in those branches. In New South Wales persons who have had ten years' practical experience in industry or commerce are accepted as candidates for the post of factory inspector.

It may also be mentioned that in the Union of South Africa it is proposed in future to admit to the inspectorate a limited number of candidates with practical experience of certain branches of handicrafts.

### § 3. — Persons associated in the Work of Inspection

Various difficulties which prevented supervision from being carried out continuously and effectively induced certain countries, as was mentioned above, to appoint special groups of inspectors who, although not actually belonging to the

inspectorate, play an important part in its work and are subject to definite rules providing for constant collaboration. Such auxiliaries are intended solely to make good the numerical inadequacy of the ordinary inspection staff, which may be due to the low density of the population and difficulties of communication over a large area of territory, or to the fact that there are numerous small undertakings in which it is essential to exercise strict supervision over working conditions. They act as independent parts of the inspection mechanism, but their work is nevertheless directed and supervised by the regular labour inspectors, who are responsible for taking any decisions that may be necessary. These collaborators are associated in the daily work of the inspectorate and must therefore not be confused with experts, specialists or other persons who are attached to other institutions or authorities and merely help the inspectorate on certain occasions.

The practical arrangements for the working of this additional machinery take a great variety of forms, some of which are distinctly original. The commonest form is that existing in the Scandinavian countries, in which salaried municipal officials are responsible for supervising a considerable number of the establishments registered as being liable to inspection.

In Finland, for example, small workplaces are under the supervision of municipal inspectors working under the guidance of the Government inspectorate. They are appointed on the suggestion of the competent labour inspector, after consultation with the workers' organisations concerned, the appointment is made by the district council and is for five years. These officials must have at least completed their elementary education, must have an acquaintance with working conditions, and must, as far as possible, have some elementary technical training. If these municipal inspectors find defects in working conditions in an undertaking, they may give instructions to the employer and express an opinion on the situation. They are not empowered to initiate legal or administrative proceedings, if they consider that steps should be taken to remedy the situation, they must report the matter to the competent labour inspector. The only exception to this rule is the case in which the workers are obviously exposed to a risk of accident or of death, in which case any inspector can order the undertaking to cease work.

until the danger has been removed or until the Minister of Social Affairs has taken a decision on the question. In such cases, however, the municipal inspectors must immediately notify the Government labour inspector.

In Denmark the supervision of certain undertakings specified in the Factories Act is carried out by machine supervisors appointed by the municipal councils for a period of four years. The Act provides that candidates for these posts must, wherever possible, have a knowledge of engineering. They are generally selected from among smiths or other small craftsmen and they receive a fee of 2 kr. for each undertaking visited. They work on their own responsibility but under the instructions of the factory inspectors. From time to time meetings of these supervisors are organised, at which the factory inspectors explain the use of the safety devices that are most commonly used in industry. It has also become customary for the inspectors to pay personal visits to each supervisor so as to examine his register and to visit with him one or two of the agricultural undertakings in his area.

In Sweden also the inspection of undertakings not employing machinery or boilers and having fewer than 10 workers is entrusted to municipal inspectors who are appointed by the municipal health offices and work under the supervision of the Government labour inspectors. It is the duty of the district inspector, when occasion arises, to visit undertakings under the supervision of the municipal inspectors so as to keep a check on their work and help them by advice. When they discover any infringements, the municipal inspectors report the matter to the competent labour inspector.

In Norway the local supervision of undertakings is carried out by inspection boards consisting of not fewer than three persons appointed by the municipal authorities for a period of four years. These boards must include at least one woman, one manual worker, and, if possible, one doctor, one of the members must, in addition, have a knowledge of machinery and its use. They work in collaboration with the labour inspectorate, which directs their work and to which they make reports on all inspections made throughout the year. These boards are entitled in plenary sitting to issue orders to employers, but they must at the same time notify the chief labour inspector.

Another form of supplementary inspection consists in authorising the workers' representatives to exercise systematic supervision over working conditions in the undertakings in which they are employed or in their own branch of industry. It should be added that such cases are comparatively rare.

In the U S S R, in addition to official labour inspectors, there are a number of voluntary inspectors (239,000 on 1 January 1938), elected by open ballot in the assemblies of workers. Any worker, salaried employee, engineer, or technical worker who is a trade union member and does not belong to the management of the undertaking may be elected as a voluntary inspector. These inspectors exercise supplementary supervision in the undertakings in which they are employed, and if any offence occurs which would render the undertaking liable to a penalty they must inform the competent official inspector. They may not be dismissed or transferred to another undertaking without the consent of the works committee and the official inspector. Special courses are organised from time to time for the training of these voluntary inspectors and for improving their qualifications. It would seem that voluntary inspectors who have particularly distinguished themselves and have the necessary qualifications are often transferred to the official inspectorate.

In Poland the employment of worker-inspectors (known as assistants) has given such satisfactory results that attempts have been made to extend the system to as many branches of production as possible. For financial and other reasons, however, it proved impossible to increase the number of these assistants very rapidly, and consequently in 1936 the district inspector for Lodz decided to appoint voluntary assistant inspectors, who receive no remuneration and collaborate in the work of inspection only in so far as conditions permit them to do so and when they feel it necessary for the protection of the category of workers they represent. These voluntary inspectors are generally selected from among candidates proposed by the various workers' unions and are permitted to supervise only establishments in their own branch of industry. They carry a special permit issued by the district inspector and enjoy the same powers as assistant inspectors.

For the sake of completeness, mention should be made

of two rather special methods which have been adopted with a view to securing more strict inspection in workplaces which otherwise easily escape supervision.

In Argentina a recent Act provides that, in addition to the officials responsible for the supervision of undertakings, the executive authorities may appoint employees to inspect industrial and commercial establishments and supervise the enforcement of labour legislation. These employees will not receive a salary, but will be entitled by way of remuneration to 10 per cent of any fines imposed for offences reported by them. They will be selected, by a method to be established by the executive authorities, from candidates proposed by the National Department of Labour, after consideration of their qualifications and experience.

An equally original method was adopted in Italy in 1937, when a group of 120 police officers was specially attached to the corporative inspection service so as to secure more effective supervision of the enforcement of legislation concerning labour, welfare and social assistance.

### WOMEN INSPECTORS

The desirability of including women in labour inspectorates was laid down as a general principle in the Constitution of the International Labour Organisation, Article 41 of which provides that " Each State should make provision for a system of inspection in which women should take part " The principle was later developed in the 1923 Recommendation, which emphasised, among other things, that women inspectors should in general have the same powers and duties and exercise the same authority as the men inspectors, subject to their having had the necessary training and experience, and should have equal opportunities of promotion to the higher ranks.

The question of the employment of women in inspection services was thus approached in some sort from the point of view of the stricter principle of equality of service conditions as between women and men.

It is, however, precisely this condition of equality that would appear to be lacking in the practice of the great majority of countries. It is almost everywhere recognised that women can do very valuable work in the enforcement of certain protective measures, but nevertheless they are still considered

as useful but less completely efficient assistants, and it is only in a very few countries that they really enjoy full equality with the male inspectors

The exact position of women in inspection services can be determined by a survey of the various forms of discrimination against women inspectors in the different countries. It should be mentioned in passing that these forms of discrimination are prejudicial to women from certain points of view only, and that they are as a rule determined by the nature of the duties entrusted to women inspectors. There are many forms of discrimination, and the simplest means of defining them will probably be to answer three questions: (a) what duties are carried out by women? (b) what are the conditions for their admission to the inspectorate? (c) what is their situation in the service?

### § 1. — Duties Reserved for Women

The first point to be noted is that there are now very few countries in which women are not admitted to the labour inspectorate. But while there are so many countries in which the collaboration of women in the work of inspection has been found useful, there are very few in which the conditions for their collaboration are identical with those of men. It is very rare for women to have access to every post in the inspection service. In practically every country, moreover, it would seem to be agreed that the duties of women and men inspectors are not interchangeable, for the women are generally employed on certain special duties and relieved of certain others. It is unnecessary at the moment to consider the reasons for these distinctions; it will suffice to mention that women inspectors are usually employed for the supervision of measures concerning the protection of women and children and the well-being of the workers.

From the point of view of equality of the sexes, the country in which the position is most favourable is undoubtedly Great Britain, in which women are treated in exactly the same way as male inspectors in every respect and are admitted to every grade in the inspectorate. The proportion of women on the staff is high: at the end of 1937 there were 75 women inspectors in a total force of 290 members. They have the same powers as men inspectors, but in practice they are



appointed as a rule to districts in which the proportion of women workers is high. In most districts a male district inspector is assisted by a woman junior inspector, and vice versa.

In France the position is rather different. Women are admitted to appointments as inspectors or assistant inspectors, but they are not entitled to claim promotion to a higher grade. They carry out the same duties as their male colleagues, but they inspect only certain categories of establishments, determined by the divisional inspector under whom they work. The supervision of retail trade (with the exception of the food and drink trades), the clothing industry, laundries, dye works and all work connected with the production of fabrics is always entrusted to women inspectors. Other industrial operations may be under the supervision of male or female inspectors.

In Ireland two out of the fifteen industrial inspectors are women. Their duties, status and conditions of service appear to be similar to those of the male inspectors, except as regards salaries.

In the United States of America the position of women in the inspection services varies from one State to another. In Massachusetts, for example, women are on a footing of complete equality and generally carry out part of the ordinary work of inspection. In the States of New York and Wisconsin, on the other hand, women are attached to special services dealing solely with the protection of women and children in their employment.

In Norway, also, women inspectors constitute a separate service which is directly under the central authority of the Labour Inspectorate. The chief woman inspector, with four assistants, is responsible, side by side with the ordinary inspectorate, for exercising supervision over all establishments employing women, young persons and children, and also over establishments in the food and drink trades even if only men are employed. The women inspectors pay special attention to conditions of sanitation. They are not entitled to issue orders for any extensive transformations or orders concerning safety devices for which special technical knowledge is required, if they note any defects requiring such action they must refer the matter to the competent inspection authority for the district.

In Denmark the work of women inspectors is organised

*along similar lines.* There are two women inspectors holding the same rank as their male colleagues. Their powers are restricted to the two inspection districts of the City of Copenhagen, in which they visit only dressmaking and knitting establishments, laundries, and establishments employing 15 or more women. In undertakings of a certain size a technical inspector is responsible for the inspection of machinery. Women inspectors may not issue orders, as that right is reserved to the district inspector.

In Finland women inspectors are on the same footing as men as regards the powers they enjoy. They are, however, required primarily to exercise supervision over establishments in which large numbers of women, young persons and children are employed. One of their particular duties is to secure improvements in the conditions of life and employment of workers and also in conditions of hygiene, medical treatment, housing and nutrition, as well as in the whole field of social welfare.

In Sweden also women inspectors belong to the first grade and are employed in the supervision of all undertakings in which large numbers of women workers are employed. There were three women inspectors in 1935.

The labour inspection service of the Netherlands includes five women inspectors and two women supervisors. These are responsible more particularly for supervising occupations in which women are particularly employed. In the exercise of their duties they enjoy the same powers as male inspectors and supervisors.

The situation is approximately the same, with very slight differences of detail, in the other countries in which the inspection service is open to both sexes. In Canada (Quebec), Cuba, New Zealand and Rumania women take part in the work of the inspectorate on a footing of equality, but their sole duty is to enforce the legislation concerning the employment of women and children.

Women inspectors in Poland have the same rights and powers as men, but some of them are engaged more particularly in supervising the employment of women and young persons. These women inspectors, while carrying out the special duties mentioned, are also expected to exercise the normal duties of inspectors in the course of their visits to various undertakings.

In Hungary there is only one woman inspector, who, in view of her special training, acts as a medical inspector but is also responsible for supervising the employment of women and children

In Switzerland the inspectorate includes one woman assistant whose duties are determined by the chief inspector according to the requirements of the service.

In Australia (New South Wales) women inspectors are given duties relating to the conditions of work of women and young persons. These duties are not considered equivalent to those discharged by male inspectors

In Venezuela the law provides that so far as possible inspectorates whose districts include the most important industrial centres shall include women, whose particular duty is to supervise the enforcement of the provisions concerning women and children.

In all these countries, with very few exceptions, women are admitted to the inspectorate under conditions which guarantee them at least nominal, if not actual, equality with inspectors of the first grade. There are other countries in which women are admitted only to the lower grades

In Italy, for example, women are admitted in practice only to the category of assistant inspectors, and even there the proportion of women is small because steps were taken recently to reduce the number of women in the civil service in general. They are employed mainly in the protection of children and women workers

In Germany also women are to be found only among the supervisors, their task being to deal with the employment of women and children and with home work and to carry out enquiries into various matters connected with these subjects

The staff of the social service in Belgium includes a certain number of women labour supervisors who carry out the same tasks as male supervisors in undertakings employing large numbers of women

Similarly, in Greece the category of assistant inspector includes a few women assistant inspectors (4 out of 18). Both the male and female assistant inspectors have the special duty of supervising the enforcement of provisions for the protection of women and young persons.

In Czecho-Slovakia the "higher auxiliary technical service" consists entirely of women (seven in 1937). Strictly

speaking they are sub-inspectors entrusted with the special duty of supervising undertakings employing large numbers of women or children. Their powers are restricted to certain special questions for which no particular technical knowledge is required. In the course of their visits they merely note any irregularities and make proposals to the chief of the inspection office to which they are attached, who alone has the right to order the necessary measures to be taken. It should be added that a Decree of 1935 containing instructions for officials of the "subordinate auxiliary technical service" (worker inspectors) provides for the possibility of appointing women to this category also.

A Bill introduced in Luxemburg provides that a "social assistant" shall be appointed for the protection of women workers.

## § 2. — Conditions of Admission

It was pointed out that in most countries women inspectors have special duties, and this fact automatically places them in the position of members of an auxiliary service. The main reason for this more or less clear distinction between the duties carried out by inspectors of the two sexes would seem to lie in the fact that labour inspection is generally considered as being essentially a technical service. It is thought that women rarely have a sufficient degree of technical training. Even if that were not the case there would still be a tendency to give them special duties, because the primary justification for their admission to the inspection service is the necessity for special measures to protect women and children in industry.

An immediate result of the specialisation of women inspectors in certain duties is that in many countries only a somewhat limited number of women are admitted to the service. The Office is not aware whether this number corresponds even approximately to the number of women and children to be protected, but that would seem to be a logical arrangement. (It appears that this is definitely the rough basis on which the proportion is maintained in Great Britain.)

Another result of the differentiation between the duties of men and women inspectors is the difference in the qualifications required of candidates of the two sexes. As a rule men are required to have a definitely technical training, whereas in

the selection of women inspectors account is taken chiefly of their moral and intellectual qualifications, as evidenced by degrees and diplomas of a different kind from those required of male candidates

These differences are not always clearly defined in the existing regulations, especially in countries in which inspectors are recruited in accordance with very elastic rules which leave the authorities free to determine the qualifications they consider necessary. Some laws, as was seen above, merely prescribe a certain general standard of education which is considered essential, and this leaves the authorities free to select inspectors with a wide range of qualifications.

In a number of countries in which male inspectors are known to be recruited from among trained engineers women inspectors may offer non-technical qualifications.

In Sweden, for example, women inspectors must have completed a course of higher education and have engaged in studies or held a position justifying the presumption that they have some theoretical and practical knowledge of industrial and general hygiene, working conditions and labour legislation.

Candidates for appointment as women labour inspectors in Finland may, as distinct from male candidates, be required to hold a university degree in political economy or hygiene or some other certificate showing that they have the necessary knowledge and ability. They must also be reasonably familiar with labour conditions and social work.

In Norway also the woman inspector and her assistants are not required to possess special technical knowledge. In Denmark a training in social and economic science is required.

In the United States of America (Wisconsin) women inspectors must hold a diploma in sociology and economic science, have a knowledge of the legislation concerning the employment of women and children and be familiar with production methods in the industries in which such persons are employed.

In Australia (New South Wales) women inspectors are recruited from women in possession of certificates in industrial hygiene and public health or with suitable experience of industrial relations or social welfare.

In France there are separate examinations for the posts reserved for women. The conditions of admission are identical, as are also the subjects of examination, except that as a rule the test in engineering and electricity is less difficult than the corresponding test for men.

In Hungary, where all the male inspectors without exception are engineers, the only woman inspector at present on the staff is a doctor of medicine.

In Ireland one of the two women inspectors is an engineer.

It may be added that in countries in which women are admitted only to the auxiliary grades the conditions of admission are naturally the same as for men, because the qualifications required do not call for any high standard of technical education.

### § 3. — The Position of Women Inspectors

In view of what has been said above it is not surprising to find that a certain discrimination is made against women inspectors as regards their situation in the service.

It has already been mentioned that in France, for example, women inspectors are not entitled to be promoted to a higher grade, posts as divisional inspectors being reserved for men. Similarly, in the Netherlands women inspectors cannot be promoted to higher grades. In Poland they enjoy equal rights in theory, but in practice they are not put in charge of a district, so that they remain assistant inspectors for an indefinite period, with the exception of one woman member of the staff who is in charge of the service for the protection of women and young persons in the general labour inspectorate. The position would seem to be similar in many other countries.

Among other cases of discrimination it may be mentioned that in Germany women inspectors (supervisors) are not confirmed in their appointments until they reach the age of 35 years, whereas the corresponding age for men is 27 years. In Great Britain, on the other hand, they are required to remain single, and a woman inspector who marries must resign and cannot be retained in the service unless a special authorisation is obtained from the Treasury.

The most important form of discrimination is undoubtedly that concerning remuneration, which would seem to be contrary to the principle of "equal remuneration for work of

equal value " laid down in Article 41 of the Constitution of the International Labour Organisation. It is impossible, in the scope of the present Report, to consider the desirability of or the justification for such a discrimination, which is based on too many different considerations to be adequately treated here. It must suffice to note the fact that very frequently the salaries of women inspectors are appreciably lower than those of their male colleagues. This is the case for example in Australia (New South Wales and Queensland), Canada (Ontario and Quebec), Finland, and the Netherlands

In Great Britain the initial salary is the same for inspectors of either sex, but in the higher grades the salaries of women inspectors are slightly lower than those of men

The situation is similar in the United States of America (Wisconsin). It may be added that in this State it has been found that women inspectors tend to leave the service comparatively early, either in order to get married or in order to accept a more remunerative post in industry.

## CHAPTER III

### POWERS OF INSPECTORS

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An analysis has already been given of the various aspects of the activities of labour inspectors in the course of their general task of supervising the enforcement of labour legislation. Being official representatives of the public authorities *vis-à-vis* the employers and workers rather than mere supervisory officials, the inspectors base their action on collaboration rather than on compulsion.

At the same time, if their task as thus defined is to be as fully effective as one is entitled to expect, it is essential — as experience shows — to give the inspectors certain special powers which enable them to exercise their duties in complete independence of the parties concerned.

For this purpose, all the national regulations confer on labour inspectors (and this term is taken to include all forms of technical supervision over the enforcement of labour legislation) three kinds of powers which will be found in every inspection system, although they may vary widely in their scope. These are :

- (1) Powers of *supervision* in the strict sense, whereby the inspectors have free access to undertakings and are entitled to question persons and examine workplaces within the undertakings ,
- (2) Powers of an *administrative* nature, whereby the inspectors may take action to protect the health and secure the safety of workers ;
- (3) Powers of a *judicial* nature enabling the inspectors to determine the existence of offences against labour legislation and to take action to have the appropriate penalties imposed <sup>1</sup>.

These three sets of powers will be successively analysed.

<sup>1</sup> Cf Chapter V



## SUPERVISORY POWERS

The supervisory powers of the inspectorate comprise two closely connected rights which will be separated for the sake of clarity in the analysis :

- (1) The right of free access to premises ;
- (2) The right freely to inspect workplaces.

### § 1. — The Right of Free Access to Premises

The formal recognition by law of the right of inspectors to have free access to premises subject to inspection is obviously a necessary condition for the exercise of the inspectors' functions

In the absence of any express stipulation to this effect, the supervisory officials might find the principle of the inviolability of the home advanced as an argument against their admission to certain premises, for that principle is sometimes taken to apply not only to dwelling houses in the strict sense but also to premises used by an employer for the purposes of his occupation or business. In the early days labour inspection services actually did meet with this obstacle, and the inspectors could not enter premises without the consent of the employer or a special warrant issued by the judicial authorities.

It was soon found, however, that this principle of a purely private nature could not be invoked as an obstacle to the supervision of the enforcement of public legislation. Such inspection became necessary as soon as employers began to employ labour, other than the members of their own family, for whom protection was guaranteed by certain social legislation ; it became absolutely indispensable when the employer used machinery which in certain cases involved serious risks for the health and safety of his employees.

At the present time, therefore, all the laws concerning labour inspection make an exception in favour of labour inspectors and other assimilated officials to the rule of common law concerning the inviolability of the home.

The right of free access to premises subject to the supervision of the inspectorate being thus universally recognised in principle, the next questions to be considered are how this

right should be organised in practice so as to become effective, at what time it may be exercised, to what establishments it should apply, to what limits it is subject, and how the exercise of the right is guaranteed

An analysis of the various national laws concerning labour inspection will show the guarantees established for the exercise of this right.

#### VISITS WITHOUT PREVIOUS NOTICE

The first guarantee found to be indispensable in the legislation of every country — and it is therefore unnecessary to enumerate the countries — is that the inspectors, on production of their authority, should be able to exercise their right of free access to undertakings without giving previous notice

The legislative authorities felt that only an unforeseen visit could enable the supervising official to discover the real normal conditions of employment and working conditions of an undertaking

If the inspector were required to give notice to the employer in advance of an impending visit, the employer would be able to conceal any trace of an offence which he habitually committed. This would be contrary to the spirit of labour legislation, which naturally requires all those subject to it to comply constantly with its provisions

Moreover, only unexpected visits can give the parties concerned the assurance — or the apprehension — that supervision will be exercised constantly, even though, on account of shortage of staff, it is carried out only at considerable intervals. The unexpected nature of the visit thus counterbalances to some extent its infrequency

An inspector will, of course, whenever possible, notify the employer or his representative of his presence in the undertaking. It is necessary to get into touch with the head of the undertaking — and indeed, certain laws make it compulsory — because without his help the inspection cannot be carried out under completely satisfactory conditions. Nevertheless, giving notice of his actual presence is a very different thing from giving notice in advance of his intention to pay a visit of inspection

## VISITS AT ANY HOUR

The second guarantee, which is merely a corollary of the first, concerns the time at which visits of inspection may be made. Here again, the laws of the different countries unanimously recognise that the inspector must have the right to visit the establishments under his supervision at night as well as by day.

It is inconceivable that the observance of the special legislation which exists concerning night work (e.g. prohibition of night work for women and children, of night work in bakeries, etc.) should be left outside the scope of the inspectors' supervision.

It may be noted in passing that nocturnal visits are evidently considered to be particularly important, for they are specially mentioned in the reports of labour inspectors.

Although the various laws are unanimous in granting the inspector the right to pay nocturnal visits, they do not agree as to whether visits may be paid at any hour of the day or night, even outside the normal working hours.

A certain number of countries, such as Argentina, Cuba, Czecho-Slovakia, Hungary, Peru, Spain, Switzerland, Yugoslavia, etc., grant the labour inspectors the privilege of free access only during normal working hours or while the undertaking is working.

Access to premises at other times than during normal working hours is not entirely prohibited, but is permitted only if the inspector has first obtained a judicial or administrative warrant, which may be granted not merely for a single visit but for a series of visits over a specified period.

Practical and legal arguments are advanced in support of this system.

From the practical point of view it is said that the purpose of the supervision is to protect the workers during their work and their occupational activities, and that therefore it would be wilfully annoying the employer or his representative to compel him to receive a visit of inspection outside the normal working hours, when the undertaking would normally be deserted.

From the legal point of view, it is pointed out that the granting of the right of free access to premises is, as has been mentioned, an exception made in certain restricted cases to

the general principle of the inviolability of the home. Beyond these limits, therefore, it is held that the rules of common law concerning the principle of inviolability should hold good.

These arguments, however, have not been accepted by the legislative authorities of the great majority of countries. In Australia, Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Great Britain, Ireland, Italy, Japan, Lithuania, Luxemburg, the Netherlands, New Zealand, Poland, Rumania, Sweden, Turkey, the Union of South Africa and the U S S R. the legislation concerning labour inspection more or less expressly grants inspectors the right to visit premises even outside normal working hours

The legislative authorities in those countries took the view that to restrict the right of free access in any way would be contrary to the purpose of labour legislation, for any work performed outside normal hours — which would in most cases be presumed to be illegal or at least to be carried out under illegal conditions — might thereby go undetected and unpunished.

In any case, the principle that visits should be unexpected — which is, as has been seen, essential for the success of the system — could not be effectively observed if the inspector were required to obtain a judicial or administrative warrant in advance.

The inspectors for their part are required to use considerable discretion in exercising the rights thus conferred upon them.

In France, for instance, the right to enter an establishment outside the normal hours is granted to inspectors only “if indications exist or complaints have been received from which it may be presumed that an offence against the regulations is being committed”

In Rumania, the inspectors must “have good reasons” for visiting workplaces in which they presume persons to be employed.

In Great Britain, Australia, New Zealand, Canada, the Union of South Africa, Ireland, etc., the right of free entrance is defined in more or less similar terms as being the right to enter any establishment “at all reasonable times” by day and night “when they have reasonable cause to believe that any person is employed there”. In most countries, the legislative authorities, being anxious to ensure complete supervision

of the enforcement of labour legislation, have left the inspectors with very considerable discretionary powers in the matter of visits and have recommended them to exercise such powers with all due moderation.

#### “ PREMISES ” AND “ WORKPLACES ”

The various laws guarantee the inspectors, under the conditions considered above, the right of free access to the premises liable for inspection and to the actual workplaces. The question arises what exactly is to be understood by those terms

The expression “ premises liable to supervision ” naturally varies in meaning according to the scope of the legislation concerning labour inspection and the scope of the labour legislation which has to be enforced

The inspectors may be required to exercise supervision only over industrial establishments employing a given number of wage earners or using power, or they may be required to supervise all industrial, commercial or agricultural establishments employing workers who are in any way subject to protective labour legislation

This means that, from the international point of view, the concept of “ premises liable to inspection ” cannot be reduced to a common denominator, for the definition must vary with the national laws.

But from the point of view of the exercise of the right of free access, the question of the definition of the term “ premises ” has now lost much of its importance. There might be establishments which honestly thought themselves exempt from supervision and which, unless any declaration were made to the administrative authorities, would not appear on the lists of establishments for inspection, although they did actually satisfy the statutory conditions for liability to inspection. Such undertakings should certainly not be allowed to escape supervision on this account, and the inspectors must have the right to visit them and see on the spot whether the work is or is not liable to inspection.

For this reason, a very large number of countries, including Australia, Canada, Estonia, Great Britain, India, Ireland, Italy, Lithuania, New Zealand, Rumania, Switzerland, Turkey, the Union of South Africa, the United States, the U.S.S.R., etc.,

either implicitly or expressly guarantee to inspectors the right of access to any premises which the inspector has reasonable grounds for believing to be under his supervision

Even in the case of other countries which have no express provision on the subject, it is probable that in the fulfilment of their general supervisory duties the inspectors must be held to have the right of free access to establishments that are presumed to fall within the scope of the legislation concerning labour inspection.

The only reservation contained in these laws — and it is fully justified in this case since it is merely a question of verifying whether the establishment in question is or is not hable to inspection — is that the visit of inspection should be made during the day

With regard to the right of free access to industrial establishments and with regard to the time of their visits, therefore, labour inspectors in the majority of countries have very wide discretionary powers

As to the scope of the terms “workplaces” or “working premises”, the legislation usually merely provides that the inspectors have free access to all workplaces and to all ancillary premises, without defining what is meant by the terms used

It is, however, clear from the spirit of the legislative provisions and from the practice of labour inspectorates that free access must be granted to the inspectors not only to workplaces or other premises in which work is normally carried out — including home workshops if these are subject to supervision by an inspectorate — but also to all premises in which work might be carried on and to all outbuildings of the undertaking, including workers’ dwellings, dormitories, dining halls, sickrooms, crèches, welfare institutions organised by the undertaking, etc

On the other hand, in accordance with the principle of the inviolability of the home, the right of free access to workplaces does not apply to the dwelling places of the employer or his workers

Here again there are certain exceptions to the principle. It was mentioned that home undertakings and workers’ dwellings forming part of the outbuildings of an undertaking might be inspected along with the workplaces. Similarly, family workshops (in which only members of the one family are engaged) are hable to inspection if the inspectors have

reason to believe that power is used (in the form of boilers, for example) or that dangerous or unhealthy work is being carried on.

In the case of dwelling houses in the strict sense in which an inspector suspects that work falling within the scope of the legislation is being carried on, he must first of all obtain a special judicial warrant before entering the premises, unless the occupier freely consents to admit him

#### GUARANTEES OF THE RIGHT OF FREE ACCESS

In all countries the right of free access to premises is accompanied by a number of guarantees of a preventive and repressive nature, these are probably rarely required in practice, but their existence shows the importance which the legislative authorities attach to the free exercise of the duty of supervision

As regards preventive guarantees, the labour inspectors are entitled to be accompanied by police officers or to call upon the assistance of public authorities responsible for the maintenance of law and order if they have reason to believe that free access to any premises may be refused

For a similar purpose the regulations of certain countries, such as Germany and Italy for example, confer on the inspectors the status of officers of the judicial police and attach permanently to the inspectorate a certain number of police officers to assist inspectors

In addition to the representatives of the police force the inspectors may also call upon the assistance of experts of any kind duly sworn doctors, engineers or chemists, public health officers, representatives of official organisations for child welfare or maternity welfare, members of industrial organisations, staff delegates, etc., all of whom share for the time being the inspector's privileges and immunities

It should be added also that the specialised inspectors appointed in certain countries for specified tasks such as the inspection of equipment (boilers, electrical plant, scaffolding, etc.), or the supervision of conditions of work laid down by collective agreements or arbitration awards, or the inspection of apprenticeship have the same privileges of free access and free inspection as the labour inspectors proper

With regard to repressive measures, further details will be given later <sup>1</sup>, and it will suffice to mention here that most national laws — without prejudice to the penalties that may be imposed under ordinary law for interference with an official in the exercise of a public duty — consider opposition to the right of free access to premises as being an offence.

## § 2. — Free Right of Inspection

The guarantee of the right of free access to premises, the main characteristics of which were outlined above, is merely a preliminary condition for the exercise of the free right of inspection within establishments, which is clearly the fundamental work of the labour inspectorate.

Here again the legislative authorities have given inspectors very extensive powers, which are indeed often wider than those granted to officers of the judicial police under ordinary law

These powers, which concern both the interrogation of persons employed in the workplace and the inspection of workplaces and plant, may be divided into three main categories :

- (1) the right to interrogate and examine wage earners and employers ;
- (2) the right to check registers and other documents ;
- (3) the right to inspect plant and materials used in the undertaking.

As the conditions under which these powers may be exercised are, with very slight differences of detail, the same in every country, it will suffice here to give a general analysis and to mention in passing any divergencies from the normal

## INTERROGATION OF PERSONS

Under all inspection laws the inspectors have first of all the right to question employers and employed persons on all matters falling within their competence or connected with the exercise of their duties. In most countries, including Australia, Canada, Estonia, Finland, Germany, Great Britain,

<sup>1</sup> Cf. Chapter IV



Hungary, Ireland, Italy, Lithuania, Luxemburg, New Zealand, Poland, Switzerland (Confederation), the Union of South Africa, the United States and the U.S.S.R., the legislation states that the inspectors are entitled to interrogate employees without witnesses. This is intended to give employees the assurance that they may give their evidence in complete freedom without running any risk of reprisals.

Moreover, for the same purpose of ensuring the frankness and confidential nature of such declarations, some laws, such as those of Australia, Canada, Estonia, Italy, New Zealand, the Union of South Africa, the United States and the U.S.S.R., authorise the labour inspectors to invite the parties to come to their offices if they consider that the interrogation cannot be satisfactorily carried out in the workplace.

The right to examine employees and question them, alone or in the presence of witnesses, applies to any person whom the inspector may meet in the undertaking and who is therefore presumed to be employed there and also to any person whom the inspector believes to be employed in the undertaking or to have been employed there within the last two or three months.

The inspectors are also entitled in some countries, and more particularly in the Anglo-Saxon ones, to require employers and employees to sign their declarations or to give their evidence on oath <sup>1</sup>.

### CHECKING REGISTERS

In the second place all the national regulations grant labour inspectors the right to require registers, documents, books, booklets, certificates, lists, notices and any other records which employers or workers are obliged to keep under various labour laws to be produced for inspection.

The obligations thereby imposed on the parties concerned will be considered in a special chapter <sup>2</sup>, and it will suffice here to mention their importance from the point of view of supervision.

It must be pointed out first of all that, although all the regulations make it compulsory to produce the books of the

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<sup>1</sup> With regard to the conditions under which official reports on an offence against labour legislation are drawn up, cf. below, Chapter V.

<sup>2</sup> Cf. Chapter IV

undertaking at the inspector's request, the scope of this obligation is far from being the same in every country. The number of documents to be produced naturally depends on the extent and importance of the labour legislation under which they must be kept, and their value will also depend on the regulations contained in the different laws concerning the method of keeping those records

In any case the fact that these records are available does much to facilitate the task of the inspectors. It relieves them of the necessity for making long preliminary researches into such matters as the observance of the hygiene and safety regulations (certificates of registration or permits), the age and physical condition of children, young persons and women in employment (employment books, certificates of fitness for work, etc.), the conditions of employment of all employed persons in respect of normal hours of work, breaks, overtime, shift work, etc (registers of hours, overtime, etc.), conditions of remuneration, such as minimum wage rates, the payment of wages (payrolls and pay books), the organisation of work in undertakings, disciplinary rules, the system of fines, etc

In addition, the fact that employers must produce the general inspection register which they are required to keep under all inspection laws and in which the inspectors note any defects they may have discovered during earlier visits, together with warnings given, orders for improvements, etc, enables the inspectors to make certain that full account has been taken of their recommendations and that any irregularities or failures to comply with the law have been rectified

In short, the documents which employers and employees are required to submit to the inspectors constitute a sort of continuous record which enables the inspector, before beginning his visit, to determine whether at first sight the conditions of employment in the undertaking seem to be in accordance with the provisions of labour legislation

In view of the importance of the examination of these documents for inspection purposes many laws, in addition to permitting the inspectors to require the production of records and to check them so as to make certain that they are in accordance with the statutory provisions, authorise them also to make copies or extracts and — particularly in the Anglo-Saxon countries — to take them away for examin-

ation and checking at home, without prejudice to their right to draw up an official report if they discover any infringements of the regulations.

#### SUPERVISION OF POSTING OF NOTICES

The labour inspectors have also the power, which is directly complementary to the preceding one, of supervising the posting up of the notices which employers are required to exhibit in their undertakings. In the exercise of this duty they are entitled not only to make certain that the notices which have to be posted up are actually there, but also to order employers to post up such notices in prominent places if they have failed to do so.

The importance of this is clearly shown by the fact that the obligation to post up notices concerns matters which are of particular interest to the workers and their employers from the point of view of labour inspection. For instance, the purpose of ordering the main texts of labour legislation, and particularly those concerning hygiene and safety, to be posted up is first of all to keep employers and employees informed of their respective rights and duties and, in the second place, to avoid any uncertainty or dispute as to the nature and scope of these obligations.

The same dual purpose underlies the rule laid down in many labour laws that notices must be posted up in workplaces concerning works regulations, time-tables, the texts of collective agreements or arbitration awards, and that warning notices must be affixed to machinery or tools so as to protect the workers against accident risks. The obligation to post up the name, address, telephone number, etc., of the district inspector or of the factory doctor is intended to permit those concerned to obtain the services of these persons immediately if the necessity should arise.

#### INSPECTION OF PLANT AND MATERIALS

Mention will be made later (in connection with the powers of regulation of the inspectors) of the right of inspectors to examine plant, a brief analysis will be given below of their power with regard to materials used in undertakings.

A certain number of regulations, such as those in force in Australia, Canada, Germany, Great Britain, Italy, Luxemburg, New Zealand, the Union of South Africa, the United States and the U.S.S.R., give inspectors the right not merely to examine materials on the spot but also to take samples of these materials with a view to their examination by an expert or to laboratory analysis.

The purpose of this rule is to permit the inspectors or other supervisory officials to determine (1) whether the substances or materials in question, although their use is not prohibited by law, might prove harmful to the health of the workers or (2) whether the use of the substances or materials in question is prohibited by legislation (e.g. white lead, white phosphorus, etc.).

In the former event the inspector will prescribe such measures as he considers necessary to protect the health of the workers and, in the second event, he will take steps to have the statutory penalties imposed.

As the penalties for infringements of this type are generally severe, it is essential to give proper guarantees to the employer. It is therefore laid down that if a sample is taken, this must be done in the presence of the employer or his representative; the sample must be sealed up and an identical sample must be given to the employer in case he may wish to have it examined by an expert selected by himself.

#### GENERAL POWERS OF SUPERVISION

In addition to the specific powers enumerated above, the laws on labour inspection confer on inspectors — usually in the form of a general clause — the generic right to carry out any examination or enquiry which they consider essential in order to determine whether the provisions of labour legislation are being observed and to this end to ask for any information or data which they consider necessary for the fulfilment of their duties.

The general form of words usually adopted for this clause shows that the supervisory powers of labour inspectors are practically unlimited, provided always that they are directly connected with the exercise of their statutory duty of securing the enforcement of labour legislation.

It follows that inspectors are not hampered in their investigations by the rules of common law concerning business or manufacturing secrets. The right of an inspector, for instance, to prevent industrial accidents makes it essential for him to know all manufacturing processes, just as his duty to keep a check on the payment of remuneration may sometimes require him to examine all the accounts of an undertaking.

In connection with the checking of accounts it may be pointed out that some laws, such as those of Cuba, make reservations on this point: they prohibit the inspector from asking for information of a commercial or financial nature. This does not apply, however, if the inspector has reason to believe that, under cover of a partnership agreement for instance, an employer is trying to avoid the application of labour legislation to one or more of his employees. In such circumstances the supervisory official is entitled to examine all the accounts of the undertaking, including the document constituting the company or partnership.

In exchange for the wide powers of discretion granted to them, which they naturally use with all the moderation that is called for by the position they hold in the confidence of the employers and workers, the inspectors are required to fulfil certain very strict obligations. The most important of these is that they shall not reveal or divulge — on pain of penalties which are often very severe — any industrial or commercial secrets which may come to their knowledge in the exercise of their duties. Further reference will be made to this obligation later <sup>1</sup>.

#### SAFEGUARDS FOR THE FREE EXERCISE OF SUPERVISION

Extensive as may be their special powers with regard to the visiting and inspection of establishments, the inspectors would not be in a position to carry out their duties in an entirely satisfactory manner unless they could count on the support of the parties concerned.

Consequently efforts have been made in the legislation of every country to secure organised collaboration between employers and employees and the inspectorate, and to repress

<sup>1</sup> Cf Chapter VI

any interference with the inspectors in the free exercise of their duties

In connection with the co-operation of the parties concerned in the work of inspection it must suffice here<sup>1</sup> to mention that in many countries representatives of the employees are very closely associated with the work of supervision, either as labour supervisors or assistant inspectors directly attached to the inspectorate or simply as staff delegates or safety men

Again, it may be mentioned that under all the laws concerning labour inspection the workers are entitled to notify the inspectors of any offences against labour legislation

Most of the laws also make it compulsory for heads of undertakings to give the inspectors every possible assistance in the exercise of their duties. It may also be mentioned that industrial associations frequently take an active part in the work of inspection

With regard to interference with the inspector in the free exercise of his duties, all that need be said here<sup>2</sup> is that penalties are imposed for any acts of obstruction, such as refusal to allow the inspector to enter premises, refusal to produce the books or registers of the undertaking, refusal to supply information which is asked for, giving false information and, in general, any act of omission or commission calculated to hinder, interrupt or delay the work of the inspection service

## POWERS OF REGULATION OF FACTORY INSPECTORS

As a result of the extensive powers of inspection and supervision analysed above, the inspectors are in a position to exercise, in complete independence of the parties and with a full knowledge of the facts, their dual mission, which comprises, first, the preventive work of protecting the workers against danger to their health and safety and, secondly, the judicial task of discovering infringements of the Acts and regulations and securing the necessary prosecutions<sup>3</sup>

The preventive side of the inspectors' work will first be

<sup>1</sup> Cf Chapter VII

<sup>2</sup> Cf Chapter IV

<sup>3</sup> On this latter point, cf Chapter V

considered ; it is undoubtedly one of the most important and at the same time one of the most complex aspects of his task. Before undertaking a comparative study of this question it will be well to define the purpose and scope of the preventive activities of the inspectorate.

### § 1. — Scope of the Inspectors' Powers of Regulation

It will be necessary to discuss the reasons why so-called " powers of regulation " are granted to the inspectors by the legislation, what interpretation must be put on that term, and in what fields these powers apply.

The reason for which powers of regulation are granted to the inspectorate is essentially a practical one. When an inspector is carrying out a visit of inspection or even when he is examining the plans of a new undertaking, he often discovers defects in the construction or working of undertakings, and more particularly in machinery or plant, which might sooner or later endanger the health and safety of the workers.

It may be suggested that these defects could be remedied by the ordinary procedure of a judicial prosecution, but certain defects in construction or working may not come within the scope of an infringement of labour legislation as defined by law and therefore the inspector may have no powers to report the matter or to prosecute. In the absence of any formal legislative provision the inspector would be legally powerless.

These cases arise quite often in practice in some countries, for social legislation, and more particularly the laws concerning hygiene and safety, cannot cover every possible case, however extensive its scope and however detailed and definite its provisions may be.

Even if the defect in question did happen to constitute an offence within the meaning of the legislation, judicial procedure is often slow in starting and dilatory in action and might not, therefore, in every case be the most successful means of dealing with imminent risks.

It is true that in most cases the employer would remedy the fault as soon as it was pointed out, for it is in matters of health and safety that the responsibilities of employers and workers are heaviest and their interests, if properly understood, most nearly identical. Therefore the inspector

can, in this field, act as an expert adviser with the maximum of practical utility and also with the greatest chances of success. But what is at stake is the health and safety of the workers, and these are much too important for the authorities to rely entirely on the goodwill of the parties concerned and on the persuasive tongue of the inspector

Hence, it is necessary to grant the inspectors executive powers which are sometimes quite extensive and go beyond the scope of their normal duties of supervising the enforcement of the legislation and securing the application of penalties. For this reason they are often called discretionary powers, whereby the inspectors are authorised, for example, to take any necessary steps for protecting the health, safety and well-being of the workers

It may be said that the value of these preventive activities is universally recognised, but their application in practice is often complicated by objections of principle or difficulties of organisation

Certain countries take the view that if the principle of the separation of powers is to be strictly applied labour inspectors cannot be given more or less discretionary powers of regulation which might overlap with the powers of the legislative authorities and those of the judicial authorities. From this the conclusion is drawn that the labour inspectors should confine themselves to their task of supervision and that it should be left to the legislative authorities to fill any gaps in the existing legislation, to the administrative authorities to issue the necessary regulations (within the limits authorised by the legislation) and to the judicial authorities to interpret the laws and regulations and impose penalties to secure their enforcement

In reality, to advance the principle of the separation of powers as an argument in this connection would seem to be based on a misconception. To describe the powers conferred on the labour inspectors in matters of health and safety as "discretionary" tends to lead to a misunderstanding of their real scope. The inspectors exercise these powers in pursuance of a formal provision of the legislation, which means that they are not granted any kind of arbitrary powers which might be contrary to the principle of the separation of powers but merely have certain powers delegated to them within definite limits specified by the legislation.



Indeed, it is often not so much a question of principle that is at the basis of this discussion as a question of expediency and one of organisation. The point at issue is whether it is desirable to entrust the specialist inspectors rather than the administrative or judicial authorities with the duty of taking such measures as may be required at any given moment to avoid the risk of possible severe bodily harm to certain workers. The replies given to this question by the various national regulations naturally differ, sometimes to a considerable extent, according to the general view taken of the problem and according to the habits and traditions that govern the administrative and judicial organisation of the countries.

It is impossible to go into details of the various national regulations, for they are often very complex and an analysis of them would go far beyond the scope of a study of labour inspection. But a brief account will be given of the powers which the inspectors are called upon to exercise when authorising the erection of new premises and when supervising the working of undertakings and plant.

## § 2. — Powers of Inspectors with regard to New Premises

As the powers of inspectors with regard to health and safety are essentially of a preventive nature, it is only natural to give them a share in the task of examining the plans of new premises, for this is, above all, a matter of prevention.

There is all the more justification for securing the collaboration of the inspectors in this work because they will, in any case, have the right to inspect new premises after they have been erected and if necessary to require alterations to be made to bring them into line with the legislative provisions concerning health and safety.

The extent of the inspectors' duties in this field naturally depends on the procedure laid down in the country for granting permits for the erection of new buildings. From this point of view countries may be classified in three groups according to the nature of their regulations.

1. Countries in which the erection of new industrial and commercial premises, with the exception of certain scheduled premises, is not subject to any supervision or is subject merely to registration without any other obligation.

When this is the case the inspectors have no powers to intervene *ex officio*, but there is, of course, no reason why the head of an undertaking should not submit his plans to the inspectorate in advance so as to make certain that his new premises will satisfy the requirements of the legislation. Similarly, the inspector may raise objections if he finds that factories or workshops in course of erection do not comply with the statutory provisions.

2. Countries in which either certain establishments which present special dangers to the health or safety either of the workers or of the public (scheduled undertakings) or all new establishments falling within the scope of the health and safety regulations are subject to preliminary inspection, but this inspection is in the hands of authorities other than the labour inspectorate (municipalities, boards of health, etc.).

This is the case at present in the great majority of countries, including Belgium, Cuba, Denmark, Egypt, Finland, France, Germany, Great Britain, Hungary, India, Latvia, Lithuania, Luxemburg, the Netherlands, Peru, Poland, Rumania, Spain, Sweden, Switzerland, Yugoslavia, etc.

According to the regulations in force in these countries the labour inspectorate is, as a general rule, required to express an opinion on all plans for new premises. It is consulted merely in an advisory capacity, but in certain countries additional safeguards are provided whereby the competent authorities are required to take account of the opinion of the inspectorate in arriving at a decision. For example, in Belgium, France, the Netherlands and some other countries the labour inspectors must express an opinion whether the plans for premises or plant in scheduled establishments are in accordance with the health and safety regulations. For this purpose plans and other data must be submitted to them as soon as the matter comes before the authorities, and the competent body may not take a decision until it has considered the observations of the labour inspectors.

In other countries, such as Germany and Hungary, for example, the labour inspectors must be consulted and in addition they have the right to appeal to a higher administrative authority if they consider that sufficient account has not been taken of their recommendations.

3. The countries in the third group leave it to the inspection services to take a decision with regard to the plans for new premises which may fall within the scope of the statutory provisions concerning health and safety

This is the case, for example, in Australia, Canada, Italy, New Zealand, Turkey, the United States (New York and Wisconsin), the U S S.R., etc

In all these countries the labour inspectors have the right, subject always to appeal to a higher administrative authority, to refuse to approve plans for the construction, fitting up, transformation or extension of undertakings, plant or machinery unless certain changes which they consider necessary in the interests of the health and safety of the workers are made.

If their orders are not carried out the inspectors may definitely refuse to approve the plans and may thus prohibit the erection of the new undertaking. It may be mentioned by way of example that in Australia, Canada, Estonia, New Zealand and the United States the labour inspectors are entitled to refuse to register a new undertaking if they consider that the plan of the undertaking, which must be submitted along with the application for registration, is defective. Before taking a final decision the inspectors must issue an order in writing mentioning the defects which they have noted and warning the person concerned that unless these defects are remedied registration will be refused. According to section 56 of the Turkish Labour Code of 1936 an employer who, after the promulgation of the health and safety regulations, intends to equip and open a new establishment must submit in duplicate to the authority responsible for inspection a detailed declaration clearly showing the characteristics, nature, position and other conditions of the premises, plant, machinery, appliances and other equipment, together with the necessary documents such as plans, sketches, photographs, etc. (for which a receipt will be given), and requesting the authorities to examine these plans and decide whether the establishment will fulfil the provisions of the regulations.

Within 20 days of receiving this statement (not including the weekly rest day or other public holidays) the competent authority must examine these documents and if it finds that the statutory conditions are fulfilled or if the employer at its

request makes the necessary changes or improvements, it signifies its approval on one copy of the declaration and of the accompanying documents and grants a permit for the erection of the premises

When the employer, having received this permit, has completed the erection and equipment of the establishment, he must immediately request the same authority to carry out an inspection. Within 20 working days after receiving this application the competent officials must visit the new establishment and carry out an inspection. The employer is then given an official permit to open and run the establishment, if it is found by the inspectors to comply with the conditions of the regulations. The official permit to open the establishment is considered as establishing a presumption that the premises satisfy the statutory conditions.

It should be added that in all these countries the powers of the inspectors to refuse to approve new undertakings apply not only to the premises themselves but also to plant, machinery, boilers, electrical equipment, etc.

### **§ 3. — Powers of the Inspectors after Undertakings have begun Work**

To ask what powers are enjoyed by inspectors in this direction amounts to asking what legal value is attributed to the measures which an inspector finds it necessary to take in order to safeguard the health and safety of the workers.

In some countries, such as China, Czecho-Slovakia, Hungary, Rumania and Switzerland, the inspectors merely inform the higher administrative authorities or other competent bodies of the employers' refusal to comply with their injunctions. It is then left to these authorities to decide what steps should be taken, but they must inform the inspectors of their decision.

In other countries, the inspectors' injunctions are imperative in the sense that failure to comply with them is assimilated to an offence against the Acts or regulations under which they are issued. It may be mentioned that in those cases the judicial procedure is often a rapid and summary one and that the penalties are particularly severe and may include the closing down of the establishment concerned <sup>1</sup>.

<sup>1</sup> Cf. Chapter V

On account of the disadvantages which may arise from the dilatory nature of the preliminary administrative or judicial procedure, quite a number of recent regulations, such as those in force in Australia, Canada, Estonia, Finland, Germany, India, Italy, the Netherlands (for certain undertakings), New Zealand, Poland, Sweden, Turkey, the United States (Wisconsin), the U S S R , Yugoslavia, etc , confer direct executive force on the inspectors' injunctions. This means that in those countries offenders are liable not only to the judicial penalties for infringing the legislation, but also to the administrative penalties which the inspector may inflict directly. For example, he may order a repair which he considers indispensable for the safety of the staff to be carried out at the employer's expense, even against the will of the latter. He may also, in extreme cases and to prevent imminent danger, order the stoppage of the undertakings or of a section of the undertaking or of an individual machine until the defects which he has noted have been remedied.

In order to safeguard the employer against arbitrary action it is naturally provided that injunctions must be sent in writing and must, save in cases of imminent danger, allow a certain period for compliance and be subject to an administrative appeal to some central authority which can give a final decision on the inspector's proposals.

It may be mentioned, for example, that in Germany a labour inspector is entitled to order an undertaking to cease work if the continuation of operations would endanger the health or lives of the workers. Similarly in Australia, Canada, New Zealand and the United States (Wisconsin), if an inspector considers that the construction of an undertaking or shop or its equipment or some special machine is dangerous, he may issue a written injunction ordering the necessary changes to be made. If the employer refuses to carry out this order within the prescribed time-limit, the inspector may order the establishment to be closed down until the necessary steps have been taken. It is interesting to note in this connection the procedure adopted in Poland. When a labour inspector issues an injunction ordering certain alterations to be made to plant or in manufacturing processes, such as the adoption of new machinery, a change in the raw materials or semi-manufactured products used in the factory, etc , an appeal lies within fourteen days to a special Committee attached to the *voivode*

of the district concerned. This Committee consists of the *vorode*, or a representative appointed by him, as chairman, one departmental labour inspector and one official selected by the *vorode* from among civil servants of the Department of Industry, the Department of Agriculture or the Department of Public Works, according to the nature of the establishment or undertaking to which the order was given. If the order of the labour inspector concerns a Government undertaking or an undertaking administered by the Government, the representative of the department concerned is replaced on the Committee by a representative of the authority to which that establishment is subordinated for economic purposes. When a question of hygiene is involved a representative of the health authorities appointed by the *vorode* is co-opted to the Committee.

The fact of an appeal being made by the employer to a higher authority does not justify him in postponing compliance with an order of a labour inspector requiring one of the alterations enumerated above, unless conditions of work in the undertaking are such that there is no reason to fear an immediate risk of death or serious injury to any worker.

If the injunction orders immediate compliance it must also mention the reasons for that condition. An appeal against an injunction ordering immediate compliance must be transmitted by the inspector to the special Committee within twenty-four hours, and the Committee must take its decision within a week.

If the defects in the technical equipment of an undertaking are so serious that no alterations would suffice to safeguard the life and health of the workers, the inspector must submit to the special Committee a proposal for the closing of the undertaking.

If the appeal is rejected by the special Committee the undertaking is entitled to appeal to a central Committee attached to the Ministry of Labour and Social Welfare, which gives a final decision.

A similar procedure is laid down in the regulations in Estonia. In Sweden also, when a proposal is made by a labour or mining inspector the supreme inspection authority may, after hearing the employer, forbid the latter to carry out certain operations or to use certain premises, machinery, implements, or other equipment, or apply certain working

methods, beyond a reasonable time-limit, unless he complies with the conditions laid down by the supreme inspection authority concerning the enforcement of the regulations on accident prevention and occupational diseases

When the danger is particularly acute the supreme authority may issue an order of this kind without hearing the employer's statement. If it considers it desirable it may request the police, at the employer's expense, to take any necessary steps to secure compliance with the order.

In the case of measures affecting working premises leased by the employer from a third party, the latter must also be heard. The inspectorate may then forbid the premises in question to be leased for industrial purposes in general or for certain industrial operations, unless the measures it prescribes are taken to improve the premises

These examples show that in many countries the legislative authorities, although anxious to protect the employer against any arbitrary action, have thought it desirable to confer on the labour inspectors sufficiently extensive powers of regulation to enable them to take steps in due time to remove dangers to the health and physical well-being of the workers inherent in the construction or equipment of any undertaking

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## CHAPTER IV

### MEASURES TO ENABLE THE INSPECTORS TO CARRY OUT THEIR DUTIES

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It was seen in Chapter III that certain powers are given to the labour inspectorate for performance of its duties. But if the inspectors are really to carry out their tasks, and in particular to effect a genuine supervision of the working of social legislation, they must also be able to ascertain the manner in which the rules of legislation are put into practice in the various establishments subject to their supervision. No doubt by informal enquiry, or by questioning the parties concerned, an official could obtain a general idea of conditions in the establishment and the presence or absence of particular plant or specified institutions; but full supervision of the working of numerous social measures is in practice impossible unless the inspectors are able to examine certain documents — lists or registers, reports, notifications, etc — in short, documents enabling them to decide whether or not the relevant legislation is being observed in the establishment in question.

The provisions in force on this subject are innumerable. It is impossible to catalogue them in this Report, and all that can be done is to deduce from the various laws and regulations certain common principles which may be regarded as essential. With this object, a distinction must be made between obligations placed on the employer and on the worker or other parties respectively.

#### OBLIGATIONS OF THE EMPLOYERS

The character of these obligations is dictated as a rule by the aim of the different social provisions, and they must therefore be examined in their natural relation to the legislation which they are intended to enforce. Some obligations, however, may be regarded as more or less independent of the matters regulated, or are common to several laws, such as the formalities preceding the opening of an establishment or the beginning of certain operations, the obligation to



facilitate inspection in a very general way, to give information, etc. In view of their general character, it will be advisable to examine these points first of all

**§ 1. — Measures preceeding the Opening of an E-stablishment or the Beginning of Certain Operations**

The inspectorate must be informed of the existence of the establishments subject to its supervision. The means adopted for this purpose vary. In some countries there are industrial police provisions which require, for reasons of economic policy or of public interest, that before the head of a new establishment starts operations he shall notify the competent authority or have the establishment registered or even obtain a concession or permit. As it has nothing to do with this procedure, the labour inspectorate is not informed. Nevertheless, the competent authority sometimes aids the inspectorate by communicating certain data to it (for instance, in the Netherlands, the Chambers of Commerce inform the labour inspectorate which persons have the status of employer).

Frequently a permit, registration or notification is required also under social legislation. Reference has already been made to the cases in which, before the opening of an establishment or the beginning of an operation, the labour inspectorate takes preventive action to ensure the subsequent protection of the workers (authorisation of dangerous, unhealthy, or offensive establishments, examination of building plans, etc.) In these cases the inspectorate is informed in virtue of the legal procedure itself. Elsewhere, it may obtain its information through the medium of other authorities — employment exchanges, insurance institutions, statistical departments, etc.

Several laws also provide that when an undertaking will presumably be liable to inspection, its head must furnish the labour inspectorate with certain information direct. Such information may be given during registration procedure, as in Australia, Ireland (factories and workshops), the Netherlands (loading and unloading of ships), New Zealand, Switzerland (factories), Union of South Africa, United States (New York), or by notification alone, as in Denmark (factories), Finland, France, Great Britain (factories), Greece, India, the Netherlands (factories), Norway, Poland, Sweden, Yugoslavia.

The information relates mainly to the following points :

(1) The labour inspectorate must be informed of the actual existence of the establishment. With this object the name and address of the employer or his substitute, the site and nature of the establishment, the title of the firm or company, etc., must be communicated; this is the case in Australia, Bulgaria (biennial reports), Canada, Denmark, Estonia, France, Great Britain, India, Ireland, the Netherlands, New Zealand, Norway, Poland, Switzerland, Union of South Africa, United States (New York)

(2) The inspectors must be informed of the nature of the proposed work in Australia, Bulgaria, Canada, France, India, the Netherlands, New Zealand, Switzerland (where the branch of industry must be indicated) and the Union of South Africa.

This obligation sometimes applies to specified kinds of work only, particularly those which involve specified risks and necessitate particular safety measures, e.g.:

Building work in Australia, Great Britain, New Zealand, and in Germany, where the accommodation provided for the workers must be specified;

Work done under atmospheric pressure above the normal (Estonia, Germany, Netherlands);

Work with acetylene, with celluloid (Germany), with cellulose (Finland);

Electrical installations (Belgium, France, Yugoslavia)

(3) From the technical point of view it is important for the labour inspectors to know what types of machine are used in establishments and what is the nature and capacity of the power used. Information on this point is therefore required in most of the countries mentioned (Australia, Canada, Denmark, France, Great Britain, India, New Zealand, Norway, Switzerland).

(4) Information on the number of persons employed or the composition of the staff must be given in Belgium, Denmark, Finland, France, New Zealand, Norway, Switzerland, United States (New York), and Yugoslavia (at the request of the inspectorate).

It should be noted that all these data often provide a

criterion for deciding whether the establishment is subject to supervision by the labour inspectorate.

Under most legislative provisions, additional information may be required if the inspectorate regards this as necessary for obtaining further light on the character of the establishment.

Any subsequent change of employer or manager or alteration in the site of the establishment or the like must also be reported.

## **§ 2. — General Measures to Facilitate the Work of the Inspectors**

In the following section a distinction will be made between general obligations to facilitate inspection — embodied in provisions whose practical significance is defined in more detail by the social legislation to be examined later — and obligations to furnish information imposed directly, and not incidentally as part of other duties <sup>1</sup>

### **GENERAL OBLIGATION**

In order that supervision may be effective it is not as a rule enough for the inspector to be unhampered by opposition from the parties; he needs some degree of positive help from them. This idea is brought out in several laws and regulations by the provision of a general obligation to facilitate the work of the factory inspectors. Thus, the British Factories Act provides in section 123, subsection 2, that the occupier of a factory, his agents or servants, shall furnish the means required by an inspector as necessary for the exercise of his statutory powers, i.e. for entering the factory and making the necessary investigations. Similar rules are prescribed in Australia, Canada, Estonia, Ireland, New Zealand, Turkey and the Union of South Africa.

In the U.S.S.R. an Order dated 14 August 1925 requires managers of establishments not only to allow inspectors freely to enter workplaces, but also to place means of transport at their disposal if the distance between the railway station and the undertaking exceeds 3 versts (about 2 miles).

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<sup>1</sup> Except, of course, for the measures to be taken before the opening of establishments, which are examined above.

### INSPECTION BOOKS

In several countries, including Belgium (dangerous, unhealthy or offensive establishments), Bulgaria, Norway, Peru, Rumania, Sweden, and Turkey, the employer is obliged to keep a general inspection book, in which the inspector enters at each visit any remarks which may arise therefrom. It is sometimes prescribed that the inspector shall also note the instructions and advice which he considers it necessary to put in writing (Bulgaria, Denmark, Sweden). It should be added that in the U.S.S.R. a special labour protection file must be kept in each establishment, this contains the inspector's instructions, decisions concerning the authorised exceptions to labour legislation, remarks on preventive action, documents relating to the application of protective measures, etc. The general register prescribed in Great Britain, and also in Ireland, must contain various sorts of entries, which may be considered more appropriately under the separate heads to which they relate.

### OBLIGATION TO GIVE INFORMATION

As a corollary to the inspectors' right of interrogation, most laws place on employers the obligation to give the supervisory officials any information for which they may ask in virtue of their statutory powers. Such an obligation may be considered as included in the more general duty, mentioned above, of providing the means necessary to inspection. A special provision on this subject is to be found in the legislation in force in Belgium, Hungary, India, the Netherlands, Norway, Peru, Rumania, Sweden, and the United States (New York).

The obligation to give information is sometimes expressly restricted by a provision that no person may be required to incriminate himself (Australia, Great Britain, Ireland, New Zealand, Union of South Africa).

Lastly, reference may be made to the provisions of section 92 of the Turkish Labour Code, which summarises all the employer's obligations in the following terms :

"Employers and their representatives . . . shall be bound to attend whenever summoned by the authorities or officials

responsible for supervision and inspection, to give them any information which may be requested, to lay before them and if necessary to deliver into their keeping all the requisite documents and records, and likewise to afford them full facilities for the exercise of their functions and to comply with all orders and requests addressed to them in this connection, without any attempt at evasion "

Certain provisions, intended to secure the public posting-up of particular documents likely to facilitate inspection, must also be classed with these measures of general information

Mention should be made, first of all, of the obligation to post the name and address of the competent labour inspector or medical official (Australia, Denmark, Finland, France, Great Britain, Ireland, New Zealand, Sweden, Union of South Africa) In Belgium this information must be entered on the official form for the rules of employment, which have to be posted up in the establishment In Brazil a notice relating to the inspection committees responsible for the supervision of hours of work must be posted

In the interests of the staff rather than of factory inspection, the texts of certain laws or regulations, or extracts from these, must be posted in the workplace Such provisions are to be found in practically every country and in respect of all sorts of regulations, more particularly those which relate to health and safety

The posting of orders, instructions, etc., issued by the labour inspectors themselves, particularly those relating to safety in the undertaking, is also intended mainly for the information of the staff In Bulgaria, Denmark, and Sweden the inspection book serves a similar purpose

The same obligation — that of publication — exists in some cases with regard to collective agreements or similar regulations, rules of employment, etc In this case, however, the essential object is to facilitate supervision of certain conditions of work, wage rates, hours, etc., and these measures will therefore be examined in the appropriate place below.

### § 3. — Measures for Securing the Enforcement of Certain Branches of Labour Legislation

Among the measures whose character is directly determined by the aim of the legislation that they are intended to promote, special mention should be made of those relating to the persons employed, obligations with respect to the application of legislation on hours of work and rest periods or on wages, measures relating to health and safety, and provisions defining the obligations of employers in case of industrial accidents and occupational diseases.

The nature of these measures may vary from country to country, or even inside a country, according to the industry in question, and the inspectors are often empowered to authorise special schemes for certain establishments (seasonal establishments, or those which have themselves taken equivalent action). Less emphasis will therefore be placed on the methods of execution than on the principles involved.

#### MEASURES CONCERNING THE PERSONS EMPLOYED

For various reasons the labour inspector needs information regarding the staff employed in each undertaking subject to his supervision. In order to secure application of the legislation protecting certain categories of workers, and particularly that relating to women, children and young persons, the inspector must ascertain first of all whether such persons are actually employed (which may be prohibited) and secondly whether the conditions of employment are in keeping with legislative requirements. Then again he may have to ascertain whether the employees — men or women, young persons or adults — are legally entitled to work in view of their origin (they may be aliens) or of the type of employment (dangerous work, work requiring a medical certificate, etc.).

The size of the staff may concern the inspector if the employment of a minimum number of persons is the condition rendering an employer liable by law to assume certain obligations. Lastly, he must investigate the extent to which the prescribed rules are applied to individuals — what are, for instance, the hours of work of each employee, the amount of wages paid, etc.

In order to carry out this supervision, the inspector must be in possession of certain data relating to the staff. It would not be sufficient for him to question the persons directly concerned (at the most this method might be used to confirm previous findings) ; he must have access to certain documents provided by the employer — lists, registers, reports, certificates.

A distinction must now be made, among these different formalities, between those which concern the whole staff and those relating more particularly to certain categories of workers.

### *Measures applying to the Whole Staff*

#### *Staff Lists and Registers*

In many countries the employer is required to keep a register in which he must enter, sometimes together with other particulars to be referred to below, the names and addresses of all persons employed, usually accompanied by indications of their sex, age (in case of persons under 21), nature of work, etc. (Australia, Belgium, Brazil, Canada, China, Cuba, India, Japan, Netherlands, New Zealand, Switzerland, Turkey, Union of South Africa, United States, Yugoslavia).

#### *Reports*

Under some laws, the employer must send this register, or a special report of persons employed, to the labour inspectorate at regular intervals (annually in Australia and Great Britain, on application in Greece, and every six months in the Union of South Africa).

#### *Employment Books*

In some countries each worker must be provided with an employment book, which the employer keeps during the engagement. Although this scheme is aimed primarily at other objects, and other entries of no concern here are also made in the books, they nevertheless serve in practice as a register of the staff. Employment books are compulsory in Argentina, Brazil, Estonia, Germany, Italy, Latvia, U.S.S.R., Yugoslavia, etc.

*Measures applying to Certain Classes of Employees**Children and Young Persons*

A register of juvenile workers is required in Argentina, Belgium, Cuba, Czecho-Slovakia, Denmark, Egypt, Estonia, France, Germany, Great Britain, Hungary, Ireland, Norway, Peru, Poland, Sweden and the United States (Wisconsin)

In the State of Massachusetts (U.S.A.) a list of all employed children between 14 and 16 years of age must be posted up by the employer. In Poland a list of juvenile workers, indicating their conditions of work, must be posted. In Great Britain the Factories Act provides for registers to be kept showing the name, address and date of birth of each young person between 14 and 18 employed in the factory. The hours within which these young persons can be employed must be posted. A somewhat similar system applies to the employment of young persons and children in shops.

Certificates of age or fitness for young workers must be kept by the employer in Argentina, Australia, Belgium (contracts of employment), Brazil (certificates), Bulgaria (books), Canada (Province of Quebec), Cuba, Denmark, Egypt (identity cards), France (books), Great Britain, India<sup>1</sup>, Ireland, Netherlands (employment sheets), New Zealand, Peru (employment books), Sweden (employment books), Switzerland (age certificates), Union of South Africa, United States (Massachusetts, New York).

The employment of each child must be notified to the local authority in Great Britain and to the labour inspectorate in Sweden. In Brazil a list of the juveniles employed must be communicated annually to the Department of Labour. In Greece the labour inspectors may require information on the composition of staffs in respect of age, family responsibilities, etc.

*Employment of Women*

Similar special provisions for women workers, apart from entry in the general registers, are in force in the following countries: Belgium (employment books), Canada (registers of women and girls employed), Egypt (registers showing names, absences for pregnancy and confinement, dates of confine-

<sup>1</sup> The general register of employees must indicate the number of the certificate of fitness in the case of each child.



ments), Netherlands (employment sheets for married women, on which the dates of confinements must be entered), Switzerland (list of women workers absent owing to confinement), and the United States (Wisconsin, where a list must be posted up)

### *Employment of Aliens*

Special lists are prescribed for alien workers in Belgium, France and Yugoslavia. As a general rule employment permits or books are compulsory for this group of workers

## HOURS OF WORK

The inspectors must investigate the manner in which the hours of work scheme applying to the establishment is observed in respect of each member of the staff. The documents reviewed above show which workers are covered by the scheme in question; but the hours actually worked by these persons can only be ascertained through other documents, which must also be drawn up by the employer and submitted to the inspector

Among these means of supervision there are posters for information and guidance purposes, registers for strictly supervisory purposes only, and notification serving both these kinds of purpose at once

### *Posters*

The general scheme applicable to the establishment is made public, as indicated above, by posting the relevant Acts, regulations, orders, or parts of them. The posting of collective agreements or similar regulations is prescribed in Australia, Canada, Germany, New Zealand, Rumania (conciliation agreements), Turkey, and the Union of South Africa. The provisions applying more particularly to the establishment are indicated by the rules of employment in cases where these govern the beginning and end of working hours, breaks, etc. After having been communicated to the labour inspectorate or other social service, or even approved by the competent authority, such rules must be posted up in Belgium, Estonia, France, Germany, Hungary, Italy (salaried employees), Japan, Poland, Switzerland and Turkey. The separate posting of a time-table which shows the beginning and end of the work, and breaks, has the same object; the time-table must be posted

in the workshops, offices, etc., in Argentina, Australia, Belgium (undertakings where such rules are not compulsory), Brazil, China, Canada, Denmark, Egypt, France, Germany, Great Britain, Italy, Japan, Netherlands and Peru.

The time-tables of shifts must be posted separately in establishments working successive shifts, in Argentina, Bulgaria (bakeries), Italy (transport), Netherlands, Peru and Switzerland.

There are many provisions on the posting of exceptions to the normal scheme which are authorised and practised in the establishment. Overtime is made public in this way in France, Great Britain (women and young persons), Norway, Switzerland and Yugoslavia. The most important measures in this connection concern exceptions to the rules on night work and the weekly rest, for the inspector who visits an establishment at hours when other establishments are usually closed must be able to ascertain, as soon as he enters, whether or not work at such time is in conformity with the appropriate legislation. To this end it is provided in many laws that the employer must post up the names of the persons working on Sundays or at night and the compensatory time off granted to them, or that he must prepare weekly rest tables, rotation schemes, etc. Such is the practice in Argentina, Egypt, Estonia, France, Great Britain (commerce), Netherlands (hours of work in bakeries), Norway, Switzerland, United States (Massachusetts), and Yugoslavia (bakeries).

#### *The Single Register*

In some countries a single register indicates both the names of the workers and their hours of work, overtime, wages paid, etc. This is the practice in Canada, China, New Zealand, Union of South Africa and the United States (Federal Wages and Hours Act). In Yugoslavia a list giving such particulars must be posted up. It should be noted in this connection that the employment books referred to above also contain information on all points of social importance.

#### *Special Registers*

In many countries the documents concerning the employees themselves and those concerning their hours of work are kept separate, though there is a close relation between them. Nether-

lands legislation provides on this subject that the staff lists shall refer, in the case of each employee, to the corresponding sheet of the hours of work register.

Special registers may indicate the hours worked by the staff. This is the case, apart from the countries mentioned above where a single register is used, in Australia (bakeries), Belgium, Brazil, Cuba, Germany (bakeries, butchers' and pork-butchers' shops), Great Britain (commerce, if the hours of work are not posted up), India, Netherlands and Turkey.

A special overtime register is required in Germany (as well as registers for the other exceptions), and in Argentina, Australia (young persons and women), Belgium, Estonia, Great Britain (if an hours-of-work table is posted up), Norway and Sweden.

In many cases registers or other documents are provided with a view to supervising the observance of the provisions governing night work, the weekly rest and compensatory rests, particular account being taken of the rules applying to certain groups of workers, this is the practice in Cuba, Czecho-Slovakia (register of persons working on Sundays), Egypt (special maternity leave), France, Germany, New Zealand (shops, hotels, etc.), Switzerland (weekly rest) and United States (New York, Wisconsin).

Registers of holidays with pay are prescribed in most countries where this matter is governed by legislation.

### *Notifications*

In many cases the employer is required to give certain information to the inspector; indeed, as has been seen above, the time-table must often be communicated to the inspectorate before coming into force. Apart from the cases in which notification is part of the procedure of authorisation, most of these formalities relate to the employer's obligation to inform the competent authority of his intention to have recourse to certain legal exceptions, the use of which is left to his discretion. Thus the employer must inform the labour inspectorate of his intention to distribute hours of work in a manner different from that laid down by law; he must report cases of extension of hours when accidents have occurred or when exceptional circumstances have arisen which could not be foreseen; he must notify if recourse is to be had to overtime in the special conditions for which provision is made;

etc. In Great Britain returns of various sorts must be made to the factory inspectorate on the hours of work of women and young persons, on the shift system used in automatic sheet-glass works, etc.

#### PAYMENT OF WAGES

As was seen with regard to hours of work, the inspector must ascertain the manner in which the statutory wage regulations applying to a given establishment are enforced in respect of each employee. This he cannot do without a staff register on the one hand (this question is examined above) and certain accounting operations on the other. The latter must relate to nominal wage rates and to the individual accounts (wages due, stoppages, and amounts actually paid).

The supervision exercised by the labour inspector does not necessarily extend to all the circumstances of wage payments, but depends of course on the powers of the inspector; it should be remembered that supervision of wage rates and similar matters — i.e. of observance of collective agreements and analogous rules — is not always within the inspector's competence. Nevertheless, even if the inspectors only supervise actual payments — a duty usually entrusted to them — they have to know the wage rates in force, and for this reason the posting up of collective agreements, arbitration awards, etc., as stated above, is very often prescribed. Decisions respecting minimum wage rates must normally be posted up.

Moreover, the inspector must be able to consult the wage sheets, which the employer is required to prepare. Such sheets or registers are sometimes part of the single register mentioned above, but are often kept separately. It should further be remembered that the employment books, also mentioned above, contain particulars respecting the wages paid.

Wage sheets or records are required in Australia, Brazil, Canada, China, Cuba, Estonia (but the labour inspectorate may exempt establishments employing less than 10 persons), Finland (for overtime pay), Great Britain (Trade Boards Act), Greece (lists to be communicated to the labour inspector on demand), Ireland (also under the Apprenticeship Act), Italy, Latvia, Lithuania, New Zealand, Norway (with specification of overtime), Poland, the Union of South Africa and the United States (in connection with minimum wage laws).

Special particulars concerning the amounts stopped from wages are required in a number of countries. In China the wage sheet must mention the fines inflicted on the workers ; and special registers for fines and other stoppages are required in Australia, Belgium, France, Great Britain (where the provisions on stoppages must be posted up), India, Ireland (where the position is the same as in Great Britain), Poland and Rumania.

In Australia and Great Britain, and also in Ireland, the registers themselves must be accessible to inspection ; in Switzerland any publication of fines by means of posters, etc., is prohibited.

In some countries there are special provisions enabling the inspector to check the amounts paid to workers protected by special schemes, such as apprentices, sub-standard workers, and persons over a certain age. In the same way the compulsory certificates authorising payment of lower wages to those groups of workers must be filed and submitted to the inspectors in Australia, Canada, New Zealand, the Union of South Africa and the United States

### HOME WORK

The practical difficulties raised by the regulation of home work are well known. The problem of supervision in particular is a very delicate one ; and in order to facilitate the task of inspectors, most laws define the employer's obligations in great detail. There is no need to examine here the formalities of authorisation or notification to which the engagement of home workers or the acceptance of home work is often subject, for these may be regarded as part of the actual regulation of home work. On the other hand, measures such as the keeping and submission of registers, lists, work books, etc., call for attention. These documents, whether they are separate or combined in a single book, relate to three points, namely, the identity of the home worker, the work he is required to perform, and the wages due to him. It should be added that a copy of the relevant document must usually be communicated to the inspectorate (every month in Australia Victoria).

#### *Lists of Home Workers*

A register of home workers, stating in particular their names and addresses, the addresses of their workplaces, etc.,

is prescribed, for example, in Argentina, Australia, Belgium, Canada, Cuba, Czecho-Slovakia, Denmark, France, Germany, Great Britain, Ireland, Mexico, Netherlands, New Zealand, Norway, Peru, the Union of South Africa, and the United States (New York).

In Germany lists of home workers must be posted up. In Australia, on the other hand, though registers are prescribed, only the inspectors are entitled to examine them; official publication of the particulars they contain may, however, be ordered by the Government in case of conviction of the employer for infringement of the relevant regulations. Such lists must be sent to the inspection authority every six months in the Union of South Africa and every month in Mexico.

Other information besides the names of the home workers must often be given, such as the names of the contractors or agents in the United States (Massachusetts), and the names of the assistant workers in the Netherlands.

#### *Work Registers*

The nature and quantity of the work given out to home workers must be entered in the registers under the legislation in force in Argentina, Australia, Belgium, Canada, Cuba, Czecho-Slovakia, Netherlands, New Zealand, Norway, Peru, the Union of South Africa, and the United States (New York).

#### *Supervision of Wages*

The supervision of wages may be facilitated in three ways by means of information on wage rates, lists of wages paid, and wage books.

The applicable wage rates must generally be posted up in the place where wages are habitually paid. As is stated above, when these rates are stipulated in collective agreements or other instruments for fixing minimum wages, such instruments must frequently be posted. Provisions respecting the posting of wage rates for home workers are in force in Argentina, Germany and the Netherlands.

The wage registers show the sums actually paid to home workers as remuneration for their labour. These are sometimes entered in a general register together with the particulars already specified, and sometimes in a special book. The latter is the case, *inter alia*, in Argentina, Belgium, Germany, the Netherlands and the United States (New York).

The wage book, stating the position of the individual worker, is handed to him. In France the employer must either keep a register of work and wages, and supply each worker with a book containing the matters recorded in such register, or keep a counterfoil book, in which latter case the counterfoils take the place of the register and the torn-out leaves that of the book supplied to the individual worker.

### HEALTH AND SAFETY

In order to supervise the observance of provisions concerning health and safety or the welfare of employees, all the auxiliary measures described in the preceding pages are not always indispensable. It is by personal investigation that the inspector can best ascertain the conditions obtaining in establishments under his supervision, but his activity in this respect is facilitated by the existence of certain posters, certificates, registers or lists.

It is sometimes prescribed that the maximum number of persons authorised to work in the same room, or the cubic space or floor space of the workroom, must be posted up (in France, Great Britain, Ireland, Italy, Sweden, Switzerland, Yugoslavia, and for work in connection with accumulators in Denmark). In India these particulars must be entered in registers. In some countries, such as Australia and New Zealand, certificates relating to the inspection of machines and the names of the persons in charge of these must be posted up. A usual provision is one requiring the posting of Acts and regulations concerning health and safety — and in particular, the rules issued by the inspectors themselves.

The provisions concerning the employer's obligation to keep registers of certain particulars vary considerably from country to country. The following are instances.

In Denmark, France and Norway, the employer must provide a book in which the inspector can enter the health and safety measures prescribed or recommended for the establishment in question. In Belgium, for establishments with high-tension electrical plant, a register in which the inspecting official may enter his findings must be provided and submitted to him whenever required.

In the U S S R. the special labour protection file mentioned above must include, *inter alia*, the documents relating to the

enforcement of protective regulations, decisions on preventive measures, etc.

In India it is provided that all the documents relating to safety must be filed in the employer's records and kept for at least 12 months.

There must be a special register to record periodical examinations of machinery in Greece, of chains, cords and other hoisting gear, lifts, etc., in Belgium and Great Britain, of electrical plant in France, of compressed-air apparatus in the Union of South Africa, etc. There are similar provisions regarding the regular inspection of boilers in almost every country.

As regards hygiene, it should be noted that the periodical whitewashing, limewashing or painting of workplaces must be recorded in a register under the Factory Acts of Great Britain, India, and Ireland.

The periodical examination of the workers is governed by numerous provisions. In Belgium it is laid down in a general way that the employer must facilitate such examinations. In Bulgaria a doctor must be attached to each undertaking with not less than 200 employees, and suitable and properly equipped premises must be placed at his disposal by the employer. In Sweden the employer is required to place a suitable room for examinations at the disposal of the medical inspector.

Registers of the periodical examinations of workers employed on dangerous operations, more particularly those involving the use of lead or other poisons, performed in compressed air, etc., are prescribed in Estonia, France, Germany (entry in supervision book), Great Britain, Ireland, Netherlands, Switzerland, the Union of South Africa and Yugoslavia.

Registers of examinations of juvenile workers, and the keeping of medical certificates by the employers, are compulsory in Belgium, Germany (particularly dangerous industries, blast furnaces, glassworks) and Sweden (where these particulars must be entered in the employment book).

#### INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

The functions performed by the inspectors in case of enquiries into industrial accidents and occupational diseases have already been noted. No official can intervene, however,



until the accident or case of disease has been notified by the employer. Such notification must be made to the labour inspector in Argentina, Australia, Belgium, Bulgaria, Canada, Great Britain, Greece, Hungary, India, Ireland, Italy, New Zealand, Norway, the Union of South Africa, U.S.S.R. and Yugoslavia. In a number of countries, on the other hand, the inspectorate is not directly informed, but the competent authority is required to transmit notifications of accidents to it (in Czechoslovakia, Denmark, France, Germany, Netherlands, Poland and Switzerland).

It should be remembered that the definition of an accident is not always the same as that used for workmen's compensation schemes. In some countries all accidents must be notified (Argentina, Hungary, Netherlands, certain States of the United States); in others, only fatal accidents or those likely to incapacitate the victim for at least a certain time (Australia (48 hours), Canada (6 days), France, Germany (3 days), Great Britain (3 days) or which are regarded as serious (India, New Zealand, Union of South Africa) are required to be notified. Similarly, the details which must be notified vary from country to country.

It should also be noted that some schemes provide explicitly for the employer's obligation to aid the inspector in every way when the latter is investigating an accident (Netherlands, Norway).

Periodical submission of reports or the keeping of a register regarding accidents and occupational diseases is compulsory in Belgium (annual statement of cases of disease), Bulgaria, France (register of persons liable to contract occupational diseases), Germany (health books), Great Britain (accidents and occupational diseases), Greece (accidents), Ireland (accidents and occupational diseases), Japan (monthly reports on accidents and diseases), Netherlands, Union of South Africa, United States (several States), and Yugoslavia (lead poisoning, caisson disease, etc.).

#### OBLIGATIONS OF THE WORKERS AND THIRD PARTIES

While certain actions by the employer are indispensable to due performance of the inspectors' duties, the collaboration of the workers or of third parties concerned or competent in the matter may greatly facilitate that performance.

Reference has been made in an earlier chapter to the inspectors' power to question workers. It follows that workers are obliged to reply to the questions which the inspectors put. Further, it is usually provided that not only the employers but also the workers must facilitate the investigations of inspectors in every possible way (Australia, Canada, Great Britain, Netherlands, New Zealand, Rumania, Turkey, Union of South Africa).

There is a special obligation in Great Britain, where any person in a factory may be required to give the inspector information as to who is the occupier of the factory.

Apart from this obligation to give information, workers must submit to the inspector, if he so demands, the documents which they are required to possess and which are in their keeping. The documents in question are as a rule the employment books not deposited with the employer (Argentina, home work and hours of work; Canada, children, Cuba, home work, Egypt, children; Great Britain, children, Netherlands, women and young persons, home work, dockers; Poland, account books; Union of South Africa, wages book).

Among the third parties required to provide the labour inspectors with information are parents, guardians, etc., as regards the age of children; persons in a position to give information regarding certain diseases, such as the tenants of a house where home workers live (for contagious diseases in Argentina), and — still more — doctors (for tuberculosis among home workers in Argentina, lead poisoning in Bulgaria, and occupational diseases in Great Britain, Netherlands and Norway).

It is sometimes provided in a general way that any person concerned shall provide the inspectors with information (Turkey), this applies to any "other person in relation with the establishment" in Norway and all persons concerned with the cargo of a vessel in the Netherlands.

## PENALTIES FOR OBSTRUCTING INSPECTORS

The laws and regulations usually provide penalties for obstructing the work of inspection. The general rules of criminal law in this connection will not be examined here;

it will be sufficient merely to review the principal provisions specially adopted in order to safeguard the activities of the labour inspectors described in the preceding pages.

In examining punishable acts or omissions, the same order will be followed as hitherto, i.e. a distinction will be made between infringements of the provisions governing the inspectors' powers and those resulting from non-observance or insufficient observance of the obligations laid down to enable inspectors to perform their duties.

### § 1. — Interfering with the Work of Inspectors

In accordance with the above plan, the provisions of common law respecting the use of violence or assaults on public officers, or resistance to them, will not be examined here, though some of these are rendered explicitly applicable to labour inspectors (Denmark, France). This section will confine itself to special legislation on labour inspection, the offences being examined first and the penalties afterwards.

### OFFENCES

The definition of the offences necessarily depends on the methods employed to determine the powers of inspectors, and therefore varies from country to country. Nevertheless there appears to be ground for distinguishing between the use of a general formula and of several separate provisions (though it should be noted that the two methods are sometimes combined, for example, in the British Factories Act and those of Australia, Canada, etc., which are modelled on it, where "obstruction" includes several infringements defined in more or less detail).

The general formula is meant to cover obstruction of the inspectors in the performance of their duties, or failure to fulfil legal obligations, or even any infringement of the relevant legislation. It is used in Australia, Belgium, Brazil (inspection committees), Bulgaria, Chile, France, Germany, Great Britain, New Zealand, Norway, Turkey, Union of South Africa, and the United States.

Among the offences particularly specified, the following should be noted :

- (a) Refusal to admit the inspector to the establishment (Argentina, Australia, Canada, Cuba, China, Great Britain, Greece, Ireland, New Zealand, Union of South Africa, United States), in China and Cuba this applies to the employer only
- (b) Failure to comply with instructions, orders, requests, etc., of the inspectors (Canada, Cuba, Great Britain, Ireland, Netherlands, New Zealand, Norway, Union of South Africa) Special reference should also be made here to infringements of orders to suspend operations or close the establishment (Cuba, Luxemburg, and in the loading and unloading of ships in the Netherlands)
- (c) Refusal to comply with the inspectors' summonses or convocations (Poland, Turkey)
- (d) Refusal to supply the prescribed assistance to inspectors (Norway, Turkey), particularly in case of enquiries into industrial accidents (Netherlands, under the Safety Act of 1934)
- (e) An important type of infringement consists in failure to observe obligations regarding the giving of information to inspectors; this may take the following forms
  - (i) Refusal to give information (Argentina, Norway, Poland and the United States — Massachusetts)
  - (ii) False information This is punishable if given by any person in Argentina and Brazil, by employers in Greece and Hungary, and by workers in Turkey. The provision of the Turkish Labour Code may be quoted in this connection: "Employees shall not address to the competent authorities or officials untruthful communications or applications respecting the undertakings in which they are employed or from which they have been dismissed, or respecting the employers, and thus give rise to unnecessary official action by such authorities or officials; they shall not reply incorrectly to questions put to them by the competent authorities, nor wilfully hamper, complicate or misdirect supervision or inspection. . . ."

- (iii) Inciting workers to give incorrect replies or forbidding them to provide information (Hungary, Turkey) The Turkish Code may again be quoted here. "Employers and their representatives shall not make suggestions for replies to employees from whom the authorities responsible for supervision and inspection request information, nor incite or compel employees in any manner whatever to conceal or distort the truth, nor victimise them in any way on account of communications, applications or information addressed by them to the competent authorities "

#### PENALTIES

The penalty usually provided for this type of infringement is the fine. Its amount may vary with the person at fault (employer or worker), as in China and Turkey, or according to whether the infringement was committed by day or at night, as in Canada. In Brazil refusal to admit the inspector or to give him the necessary information is considered to be a serious offence involving the maximum penalty permitted under the law. Imprisonment is provided for in the United States (Massachusetts), whereas the closing of the establishment may be ordered in Argentina, and in Bulgaria if there is danger for the staff.

In case of a second offence, the amount of the fine may be doubled in Argentina, Brazil and Bulgaria, and imprisonment may be inflicted in Turkey. Under the Cuban law, if there is a risk of accidents, the establishment may be closed until it has been inspected and the regulations have been complied with.

#### § 2. — Infringements of Obligations respecting Notices, Registers, Posting, etc.

In view of the public character of the obligations imposed on the parties for purposes of labour inspection, their fulfilment is secured by penalties. Thus, certain factory Acts provide in general that any person guilty of an infringement for which no penalty is expressly provided shall be liable to a fine (Australia, Great Britain).

As a rule, however, the laws or regulations provide special penalties for each infringement considered. In view of the number and variety of these provisions, it would be impracticable to enumerate in detail all the cases for which they provide. An attempt will merely be made to group them according to their most essential features, with a distinction between two main categories :

- (1) Failure to make the required notifications, prepare the required sheets for posting or keep the required registers, or refusal to submit these documents to the inspector when he so requests ;
- (2) False statements or falsification of documents (books, registers, notices, etc.).

As regards the first group, penal sanctions are attached in many Acts to the different obligations, the most important of which are mentioned in the preceding pages. A fine is the penalty usually prescribed.

Incorrect statements, not such as to fall under ordinary criminal law as forgeries, are specially covered in Argentina, Australia, Brazil (hours of work), Cuba (hours of work)-Great Britain (children and young persons), Sweden (employment books and staff registers) and Turkey (reports in accordance with the prescribed form).

The case of the employer who causes his workers to make false statements has already been mentioned. It should be added that in Great Britain, as also in Australia, Canada and New Zealand, the employer is liable to a penalty if he conceals or prevents any person from appearing before the inspector or being examined by him.

Mention should also be made in this connection of a provision of the British Factories Act (section 114, subsection 3) ; this states that any person who removes, damages or alters documents which must be posted is liable to a penalty.

The penalty for these infringements is a fine, with a possibility of imprisonment in particularly serious cases (Australia, Great Britain, Turkey).

## CHAPTER V

### ENFORCEMENT PROCEEDINGS

While the law and practice in force in different countries as regards procedure usually reveal greater discrepancies than may be found in the fundamental principles of substantive law in those same countries, it may be useful to devote a few pages of this Report to a survey of the manner in which the labour inspectors in some countries proceed in the discharge of their duties and in the enforcement of the laws which come under their supervision.

The inspector's function is a twofold one. He is to act as the adviser who makes suggestions to the employers for the improvement of conditions of work in accordance with the intention of the law, and as the policeman who sees to it that the provisions of the law are respected under any circumstance. The emphasis placed on one or other of these two aspects varies from country to country.

Obviously the instrument placed at the disposal of the inspector will be different according to the purpose of his mission, and the rules of procedure governing his activities will vary with the powers conferred upon him.

#### § 1. — The Inspector's Duty to take Action in Case of Contraventions

When the inspector acts in an advisory capacity, he generally has no powers of compulsion. His duty then consists in attempting to persuade the offender to comply with the law. Where no results are obtained his next step is to address a report to the competent authorities, stating all the circumstances of the case and possibly to make certain recommendations. In most countries the inspector reports the facts to his superiors in any event. In the countries in which the inspector is given powers akin to those of a police officer, then he is also given certain powers of compulsion.

As will be seen in the following pages, the powers of compulsion given to the inspector, apart from the powers of control and of regulation already discussed above in Chapter III, may

include, as is the case in some countries, the right to inflict penalties directly upon those who are found at fault or in certain cases refuse to obey the inspector's injunctions to remedy the offence. This right is tantamount to the exercise of quasi-judicial power by the inspector, but is better treated as an administrative measure in order to maintain the distinction between the infliction of penalties by the inspector and the infliction of penalties upon condemnation by the judicial authorities proper.

The other means at the inspector's disposal include the right to institute legal proceedings against an offender, or to report the infraction to the competent authority with recommendations for the taking of enforcement measures.

But whatever may be the nature of the task of an inspector, he is in all cases responsible to his superiors for the manner in which he uses his judgment in resorting to the means at his disposal to ensure the proper application of the laws and regulations under his supervision. The responsibility with which he is invested as well as the possible gravity of the consequences attendant upon the infringement of certain social laws require that he be endowed with the same sense of duty, integrity and discipline as is expected of any officer of the law. When he discovers an infraction of any law or regulation, he has no option but to exercise his better judgment in the exercise of his duties, which may consist merely in advising the offender, or in reporting the case to his superiors, or again to use the means at his disposal to secure due observance of the law.

Legislation imposing upon an inspector the obligation to take action against the offender in all cases of contravention without leaving the inspector any choice as to whether or not he may overlook the offence or irregularity, can be found in the laws of two countries. One of them is the U.S.S.R., where the law stipulates that the inspectors who do not take the necessary action against an offender in the case of continued breaches of labour law are liable to be prosecuted as if they were themselves the actual law-breakers. But, be it noticed, this would seem to be the law applicable only to cases of continued breaches of the law.

The other available illustration of such a law is found in the State of New York (U.S.A.), where the law prescribes that any Government official who violates, evades or knowingly



tolerates any violation of a labour law will be degraded or dismissed

This second example is more of an illustration of the type of disciplinary measures which may be taken against an inspector who fails in his duty and knowingly tolerates the violation of a law the enforcement of which has been placed under his supervision. It is difficult to estimate the extent to which the particular responsibility which rests on the inspector to resort to the enforcement measures at his disposal would justify imposing upon him disciplinary measures which do not necessarily apply to other officers of the law who have failed in the complete fulfilment of their duties.

Since there is practically no legislation on that point, it must be assumed that the majority of countries have deemed it sufficient to resort to ordinary disciplinary measures applicable to other Government officials in order to ensure that the inspector does not unduly tolerate breaches of the laws or regulations.

## **§ 2. — Warning by the Inspector before taking Enforcement Measures**

Whatever may be the nature of the steps to be taken by the inspector against an offender, the question always arises whether or not a warning should be given beforehand. The term "offender" is here used to include the employer or his representative, who is usually one of the responsible officials in the establishment. But that is a matter to be determined by the national law.

Where the duties of the inspector are more educative than punitive in character, the leaning will be towards giving warnings in all possible cases, whereas if the inspector's task is more punitive than educative, the tendency will naturally be to take action more often without giving previous warning. In the end the attitude of the inspector in all cases where he has to exercise his own judgment will be determined by the degree of severity with which his superiors wish him to ensure the enforcement of the law.

But cases can also be found where the law has specified to a larger or lesser extent the conditions under which such a warning can be given or withheld.

In some countries certain labour laws declare that the

offender will not be liable to the penalties prescribed unless he has been notified beforehand to comply with certain requirements. Such is the case for instance in the Canadian Province of Ontario, where the factory legislation contains provisions concerning the health and safety of the workers and prescribes penalties to which the employer is not liable unless he refuses or neglects to comply, within a certain time, with the requirements of those provisions as notified in writing by the inspector. Provisions of that nature may be found in other Provinces of Canada and also in other countries

The law is not so easy to interpret in this respect when it proceeds, as is the case in certain countries, to authorise the inspector to impose a fine directly upon an offender, or to institute legal proceedings directly against him without specifying the extent of the warning to which the offender may be entitled. Judging from the general information which is available, it would seem that in those special cases the inspector is expected to exercise his discretion to the best interest of the law and give such warnings as may be deemed likely to redress the situation

More specific provisions are to be found on the other hand in connection with the taking of legal action by the higher competent authorities. Very few national laws indeed require that a previous warning be given to the offender. Illustrations of the principle may however be found in Czecho-Slovakia, where a former Austrian law of 1883 requires that a warning be given to the offender before legal proceedings are taken without specifying whether the rule covers serious offences as well as infractions of a minor character. The same principle is to be inferred from the law in Yugoslavia, although section 125 of a law of 1922 for the protection of the workers would seem to indicate that no warning is required when the social law to be enforced has expressly fixed the amount of the fine or the penalty of imprisonment.

More countries on the contrary have specially decreed that no warning is necessary. Thus, in Estonia the law on labour inspection requires the inspector to draw up his report with a view to the taking of legal proceedings, without any warning to the offender, if it appears that the breach of the law was committed intentionally, or if as a result of a breach committed through ignorance or misinterpretation of the law, serious material damage has been occasioned or serious injury

has been or could have been caused to the health of the workers

In Hungary no warning is given according to law in the case of a definite breach of the law for which penalties have been provided. Administrative rules however require that the employer be warned beforehand in the case of minor offences. In India, Italy and South Africa the factory laws tend to authorise the inspectorate to take legal action without previous warning.

In Argentina and Rumania no warning is given according to law in cases of serious breaches, whereas ignorance of the law will not entitle the offender to a warning under Egyptian regulations. The law of Massachusetts (U.S.A.) requires immediate institution of proceedings against infractions of the one-day-in-seven law or the laws regulating the hours of work of women and children. But an exception is made occasionally when it is the employer's first offence or when it is obvious that the violation was unintentional. But violators of other laws or orders are not subjected to immediate prosecution. As a rule the inspector is trained to act as an educator rather than as a policeman.

Almost analogous provisions may be found in the laws of the State of New York and in the State of Wisconsin, to mention only three important States in the Union.

Again, in the U.S.S.R. administrative regulations allow prosecutions to be started without previous warning in the event of deliberate violations of the law, that is in the case of serious offences.

The foregoing illustrations should suffice to show the trend of the law in the countries for which information is accessible.

In practice the offender is warned whenever this can be done without imperilling the proper application of the law. The offender is almost always given at least a first chance to bring his behaviour into conformity with the spirit of the law. For instance a warning is always given in practice in Australia, Canada and New Zealand in the case of a first offence or of a breach of a minor character, and possibly in the case of certain major offences. The same is true of India, Italy and the Union of South Africa, although factory legislation in those three countries would encourage immediate prosecutions in many cases.

In Great Britain, "In ordinary cases, if there has been wilful evasion of the provisions of the Act or continued care-

lessness in observing them the inspector does not hesitate to prosecute. Where the contravention appears to be due to ignorance or misunderstanding of these provisions or failure to appreciate their importance, he will proceed rather by way of instruction and caution — for he is an adviser as well as a policeman — taking care at the same time to warn the offender that he has made himself liable to legal proceedings against him and that such proceedings will follow unless he complies with the law in future. There are few cases in which such a warning does not suffice to secure compliance, there are many more in which the use of simple persuasion achieves the inspector's end, for he plays increasingly among employers the part of expert counsellor.<sup>1</sup> Such leniency, however, is a matter of administrative discretion and not of right. The employer is liable to be prosecuted — and in case of deliberate violation or serious negligence is prosecuted — without previous warning.

In Ireland a tendency towards more frequent prosecutions is evident from the figures for recent years. In 1936 205 firms, and in 1937 108 firms, were prosecuted for offences under the Factory Acts, as against an average of 15 in the previous 8 years.

As there must be a greater number of minor infractions than serious ones committed in the different countries, the practice of giving offenders a previous warning obviously tends to create a sort of custom which has more or less the force of law. According to the information which is available it appears that in Japan, for instance, a warning is given even in flagrant cases.

Abuses could easily arise if the leniency shown in lesser infractions were extended too indiscriminately to more serious offences. As a safeguard against this possible danger, it is essential for the inspection authorities to reserve their right to take enforcement proceedings directly when the gravity of the offence justifies this measure.

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<sup>1</sup> INTERNATIONAL LABOUR OFFICE *Factory Inspection — Historical Development and Present Organisation in Certain Countries*, 1923, p. 27

### § 3. — The Infliction of Penalties by Administrative Procedure

#### BY THE INSPECTOR

Normally penalties are inflicted upon a culprit after judicial proceedings have been instituted and carried through to a judgment of the competent court of law ordering that the penalties provided by law be inflicted upon the person judged guilty of some infringement of the law. But in supervising the application of certain labour laws the labour inspector in some countries is given the power to proceed more directly and to impose a fine or take such other measures as are provided by penal law without having recourse to the authority of the courts.

The object of this method of procedure is presumably to avoid certain delays which must necessarily be incurred by the institution of legal proceedings. This is a purpose which is most desirable, particularly when the offence is of trifling importance and the penalty to be imposed is small. But the system may be open to the objection that the inspector is thereby invested with the functions of both prosecutor and judge, which tends to cast doubts on the justice of the issue. In the cases where penalties have been inflicted, there is a danger that the relationships between inspector and employer may become strained, which would be detrimental to the effectiveness of subsequent visits of inspection. The inspector's authority is also apt to be unfavourably affected by an appeal which would reverse his decision and possibly leave doubts as to his impartiality. But too little information is available on the subject to justify further comments. It may be enough to add that as a punitive measure the mere threat of legal proceedings to be started to the knowledge of everyone before the regular courts may of itself be as effective a deterrent as the penalties which the inspector may be entrusted to inflict. In fact the unpleasant and unfavourable publicity connected with a legal prosecution is often a greater punishment for the offender than the penalty which the court itself imposes.

Generally speaking it may be said that when the law authorises the inspector directly to impose a fine upon an offender, it leaves much to the discretion of the inspector, who usually takes into consideration the question whether the offence was committed intentionally or whether it was the result of ignorance or mere procrastination, particularly when the offence is of a minor character.

There are only a few countries where the labour inspector is given the power to inflict penalties directly. Among these must be mentioned Germany, where a Decree issued on 2 February 1937 by the Minister of Labour for the Reich and for Prussia gives the inspectors authority to impose fines when the offence is one punishable either by a fine not exceeding 150 RM or the equivalent imprisonment. Otherwise the inspector must restrict his activities to reporting the infringement to the competent authority.

In Argentina the law applicable to the Federal District empowers the inspectors to impose a fine varying from 50 to 100 pesos upon the head of an establishment where home work is carried on with the use of pressure vessels, or where unhealthy or dangerous work is being done.

Since 1932 labour inspectors in Italy have the right directly to impose a fine which may be as high as 2,000 lire, or more if special laws so authorise, upon persons who infringe the orders or injunctions issued by the inspectors. Such orders or injunctions must be drawn up in two copies and signed by the inspector and by the employer or his representative, who each keep one copy. When the employer or his representative are absent or refuse to sign the document in question, it is executory without their signature.

In the U.S.S.R. the official labour inspectors may by administrative procedure impose fines directly upon offenders in the case of minor offences which are not required by law to be judged by a criminal court. The same principle was embodied in a legislative decree recently promulgated in Peru.

According to a recent Yugoslav law, not only may the regional inspector impose fines directly in numerous cases of contraventions, but where the head of an undertaking is guilty of a second offence the inspector may pronounce against him a sentence of imprisonment for a period which may be as long as three months. That is doubtless one of the rare cases where the inspector can commit directly to imprisonment. But this authority is granted only to the regional inspector and not to the local inspector in Yugoslavia.

The general rule in Cuba is that penalties for offences reported by inspectors are imposed by police magistrates, but certain laws make an exception to this rule and specify that contraventions of those same laws may be punished by fines inflicted directly by the inspectors who discover the offences.

In that case the inspectors must report the matter to the mayor of the district, to whom the fines are to be paid within a given time-limit. If the offenders do not pay within this time-limit, the mayor transmits the file of the case to the competent magistrate, who enforces the penalty in accordance with the statutory provisions.

In Poland the Legislative Decree of 24 October 1934 on the labour courts gave the labour inspectors competence with regard to the direct imposition of fines fixed by different laws for infraction of those laws or of the orders issued by the inspectors under the laws. This jurisdiction had formerly belonged to the labour courts<sup>1</sup>. Under the new Decree the inspectors in a number of cases act as judges of first instance.

In the countries where inspectors do not in general have power to impose fines directly without court action, they may sometimes have recourse to special measures. In the State of New York, for instance, they are invested with the right to "tag" or "seal" insanitary places or unduly hazardous machines or illegally manufactured home-work goods. Under the minimum-wage law the inspector is also given authority to publish the names of the violators of that law, and the industrial home-work law gives them the right to suspend or revoke licences and certificates.

In every case, as will be seen in § 8 below, an appeal is allowed the offender against the direct infliction of a penalty by the inspector.

#### BY THE HIGHER AUTHORITIES

In several countries the first steps for the enforcement of the recommendations contained in the inspector's report are taken by the administrative authorities. There is no doubt that a good deal of litigation can be avoided by this method of procedure, which in certain cases implies as thorough an investigation of the facts as might be undertaken by the judicial authorities.

In Argentina, for example, the law requires the head of the administrative department concerned to hold a hearing of the alleged offender in the presence of the inspector within ten days from the receipt of the inspector's report and there-

<sup>1</sup> Cf. INTERNATIONAL LABOUR OFFICE *Labour Courts*, Geneva, 1938, pp. 143 *et seq*.

upon decide the point at issue within the five days following His decision must be communicated to the alleged offender either orally or in writing If a fine is imposed the offender has 48 hours in which to comply ; otherwise his establishment or shop may be closed down.

The law in Peru also gives to the labour office, the general labour inspectorate and the district inspectorate the power directly to inflict prescribed fines for infringements of the laws and regulations concerning labour conditions Similar powers are granted to the administrative authorities under the labour law in the U S S R

In Venezuela in default of express provision to the contrary the fines prescribed for the offences defined in the Labour Act of 1936 may be imposed by the inspectorate or by the authority appointed for that purpose by the inspectorate When the fines imposed cannot be collected, the offenders may be punished by imprisonment for the corresponding periods laid down in the Penal Code In Estonia also penalties may be imposed by the chief inspector when the law has fixed the amount of the fine to be paid

#### § 4 — The Reporting of Contraventions by the Inspector

##### TO ADMINISTRATIVE AUTHORITIES

The method adopted for supervising the application of labour laws and regulations in certain countries consists in having the facts investigated by labour inspectors, who are not allowed to take any other action than to report such contraventions as they may detect to the authorities which are competent to ensure compliance by inflicting the appropriate penalty upon the recalcitrant

A labour inspector generally reports any contravention which he has observed to his immediate chief or to the head of the service or department which is responsible for the application of the law under which the inspector discharges specific duties In Argentina, for instance, the inspector reports to the head of the national labour department through the inspection service such infringements of the law as he may have observed personally or has found out through the denunciation of some third party, except where, as mentioned above, he has authority to penalise the offender directly.



The method of reporting by labour inspectors is bound to vary from country to country. In the Province of Ontario, for instance, the inspector draws up his report, containing a statement of the facts and his recommendations, in three copies. He sends one to the responsible inspection service, leaves one with the head of the establishment concerned and keeps the third copy for future reference and subsequent visits. Thereupon the head of the inspection service, in so far as he agrees with the inspector's report, gets into communication with the head of the undertaking concerned and endeavours by correspondence to have the inspector's recommendations carried out. According to the circumstances of the case he will instruct the inspector to pay a second visit within a certain period of time to ascertain if the irregularity complained of has been remedied. The Department of Labour decides when legal proceedings need to be instituted to secure compliance with the law.

A similar procedure is followed in the other Provinces of Canada, but subject always to such slight modifications as may be dictated by local circumstances.

In all Provinces the administrative authority must resort to the judicial authorities through the Attorney-General of the Province for the institution of legal proceedings when necessary, that is, whenever compulsion is required for the infliction of penalties or the taking of other measures.

There are countries where, as in Canada, the inspector draws up a report for every visit of inspection and records all his observations as well as his recommendations. In other countries, Estonia for instance, it would seem that the inspector may give the alleged offender an oral warning which is not recorded as a complaint if he finds that the infraction was due either to ignorance of the regulations or to a misinterpretation of them; whereas if the offence was committed intentionally or if it caused or could cause serious prejudice to the health of the workers, the inspector's report is drawn up with a view to the institution of legal proceedings and the report in such a case may be transmitted either to the chief inspector or directly to the judicial authorities, with recommendations as to the penalty to be inflicted. But when the law has already laid down the amount of the fine to be paid, the inspector must submit his report directly to the chief inspector, who imposes the fine by administrative procedure.

The district factory inspector in Great Britain makes a report to the superintending inspector and requires his approval before he can start legal proceedings. But under the Trade Boards Act, contraventions must be reported to headquarters, where a special service considers the action to be taken.

In Poland the Decree of 14 July 1927 provides that if the inspector discovers that in some establishment the provisions for the protection of the life, health and morals of the worker or the general measures for the protection of labour are not observed, he must draw up a report on the conditions and give the manager of the establishment written instructions to remedy the irregularities. But, as was mentioned above, since the Decree of 24 October 1934 he may in a great many cases impose a fine directly, thereby discharging a function which previously came within the jurisdiction of the labour courts<sup>1</sup>.

In Switzerland the federal factory inspector proposes to the cantonal authorities such measures as may be deemed necessary to ensure respect of the federal factory laws by a recalcitrant who refuses to submit to his injunctions. He usually makes an oral recommendation to the party who is guilty of some infraction and when the matter is relatively serious he confirms the recommendations by writing to the offender fixing a time limit for the order to be carried out. The cantonal authority is thereupon informed of the nature of the injunctions and makes a report in due course to the federal inspectorate, giving an account of what has been done to secure compliance with the order. In some cases the federal inspectorate proposes directly to the cantonal authorities that they should take legal proceedings against the alleged offender. The decisions taken by the administrative or judicial authorities in the canton are communicated to the federal inspectorate as soon as they have acquired the force of law.

The inspector in the Union of South Africa generally reports to the administrative authorities, that is to the Department of Labour, which in the past endeavoured whenever possible to secure observance of the prescribed conditions of employment without having recourse to legal action. But

<sup>1</sup> See above, § 3, "The Infliction of Penalties by Administrative Procedure".

recently the adoption of a stricter policy led to the issuing of instructions to inspectors that cases where a previous contravention by the same employer is on record must be referred immediately to the Public Prosecutor, unless the offence is of a minor nature and occurred in circumstances which would not justify the institution of court proceedings without giving the employer an opportunity to adjust the matter voluntarily.

The foregoing examples will suffice to illustrate the peculiarities attendant upon the reporting of contraventions by inspectors to the administrative authorities in the different countries.

### TO JUDICIAL AUTHORITIES

A study of the procedure followed by the inspectorate in different countries also offers examples of cases where the inspector, upon discovering some infraction of the law, draws up his report for direct reference to the Department of Justice, requesting that appropriate action be taken. Turkey offers an illustration of this particular rule, but there is no information available to show what administrative negotiations are gone through before the alleged offender is actually brought before the courts of law.

In Estonia too, as already mentioned <sup>1</sup>, there are cases where the inspector may report directly to the judicial authorities. This is true also of Finland and of the Netherlands.

The labour inspector in France usually accounts for his activities to the administrative authorities, but through them he must have recourse to the Department of Justice for the infliction of penalties upon offenders. The discovery of a breach of the law which is not explained or remedied within a definite period of time may give rise to the drawing up of a special report or charge known as a "*procès-verbal de contravention*" which indicates the nature of the offence, the time and place at which it took place, and other circumstances surrounding the act or omission complained of. The charge may be rejected by the courts if not made in the prescribed form. As the complaint must also be made within a reasonable time after the discovery of the irregularity, it has to be registered in order to be officially dated, and is addressed to the public prosecutor's department. If that department is of

<sup>1</sup> See above, p. 171

the opinion that the findings on which the complaint is based are too vague or insufficient, then the inspector who drafted it is asked to supplement the information. The accused is also given an opportunity to explain his position. The charge may not go further than the public prosecutor's department if it is decided that there are no grounds for prosecution. But the inspector has the right to know what action has been taken. Under French procedure the inspector does not submit a written report to the higher authorities on a particular case unless he intends legal action to be taken for the infliction of a penalty by the appropriate tribunal.

The general laws of the State of Massachusetts require the inspector to "make complaint to a court or trial justice having jurisdiction and cause such owner, proprietor or manager to be prosecuted." But, in practice, the decision to begin prosecution is made by the labour commissioner.

One peculiarity of the system in force in India is that a copy of the report sent by the inspector to the occupier or manager of a factory, containing some order or recommendation to remedy certain unsatisfactory conditions of work, must also be communicated for information to the District Magistrate.

Japanese legislation does not authorise the inspector or the police official directly to inflict a penalty upon the party responsible for a breach of law, but the matter must be referred to the public prosecutor in the name of the inspector and the prosecutor decides whether or not the matter is to be sent to the criminal court for public trial.

The Rumanian law on labour inspection prescribes that the inspectors are entitled to report directly to the judicial authorities such breaches of law as they have discovered. But, since the creation of labour courts in accordance with the Labour Courts Act of 15 February 1933, infractions of labour laws are dealt with by labour courts, at any rate in the districts where such courts have been established.<sup>1</sup> In Portugal also infringements of labour laws are reported to the labour courts.

In the U S S R the inspector who discovers breaches of labour law, which according to the Criminal Code should first be submitted to an examining judge, must lay information

<sup>1</sup> Cf. INTERNATIONAL LABOUR OFFICE, *Labour Courts*, Geneva, 1938, pp. 158 *et seq*.

before the special magistrate competent to hold a preliminary hearing of the case. But, in certain circumstances, the inspector can bring the matter directly before the court for trial. This is the case where the offences discovered had already been the subject of a previous penalty inflicted through administrative procedure, or in any event when overtime has been carried out contrary to law.

### § 5 — Institution of Proceedings

To succeed in the enforcement of the law without having recourse to the courts is doubtless the ambition of every inspectorate. That is why the inspector unless compelled by law to bring the offender directly before the courts will always endeavour to obtain compliance with the law by force of persuasion. It is indeed very often easier to persuade the offender to do right than to prove to the court that the offender is doing or has done wrong.

The inspector nevertheless is bound to encounter now and then a party who holds a different interpretation of the law or has a different conception of its purpose. The procedure followed in one country may not be illustrative of what could be done in another, since the judicial institutions of the respective countries may have had a totally different origin and consequently will have influenced accordingly the methods of enforcement at the disposal of the different inspectorates. But it may be interesting to glance rapidly at what is done in a few countries in the way of the institution of legal proceedings either by the inspector himself, or the higher authorities or again by third parties.

The inspectorate may be empowered to bring an action before the civil courts, for instance, to recover wages due to a worker, just as it may start proceedings before the police courts or criminal courts for the infliction upon an offender of a penalty, which may be either a fine or a term of imprisonment, as the laws and regulations prescribe. The references below to the institution of legal proceedings include proceedings either under civil or penal law or both, according to the case.

## BY THE INSPECTOR

*With Permission of the Higher Authorities*

Authority of the Chief Inspector, or of the Minister who is at the head of the Department which is responsible for the administration of the particular Acts, must be obtained before legal proceedings are instituted by the inspector under Australian legislation.

In the State of Massachusetts proceedings are instituted in the name of the people of the Commonwealth at the instigation of the Commissioner of Labor. Those inspectors who are lawyers handle the cases arising in their district. Other prosecutions are ordinarily conducted by the legal counsel of the inspection division, although exceptionally some inspectors, particularly in remote parts of the State, present their own cases in court.

The district inspector must obtain the authorisation of the superintending inspector in Great Britain before he is allowed to institute proceedings in a case of contravention. He usually opens the prosecution by laying a statement of the offence charged before a magistrate, who thereupon issues a summons requiring the person charged to appear before a court of summary jurisdiction at a fixed time and place. At the trial the inspector is not usually represented by counsel but conducts the prosecution in person and calls witnesses at his discretion. Counsel may however be engaged in important cases.

He may also use his discretion as to the manner in which the action is to be brought, so as to obtain the imposition of a higher or lower fine according to his view of the gravity of the offence. For instance, where several persons are employed contrary to law by an employer, the inspector may so frame the action before the court that the employer will be penalised for one offence or for as many offences as there are persons employed unlawfully.

In New Zealand the factory laws prescribe that proceedings in a court of justice must be authorised by the chief inspector. They are generally based on the information or complaint of an inspector and may be conducted or continued by the same or any other inspector or any person authorised by a magistrate to conduct them.

The public prosecutor's department to which the inspector's

report is addressed in France has a right to decide whether or not legal proceedings are to be instituted. The inspector, although entitled to be informed of the action taken, has no statutory right of appeal against the decision of the department not to prosecute.

When the charge is to be followed up the report is transmitted to the representative of the department of justice attached to the police magistrate's court or to the higher penal court, that is, the "correctional tribunal" according to their respective jurisdiction. The witnesses are called, the case is heard and judgment may be rendered under the same conditions as apply to other charges laid by police officers. The costs of the action are borne by the defendant unless he is acquitted, in which case the State bears the costs.

*At the Inspector's Own Discretion*

The Italian law of 1932 gives the inspector the right to institute proceedings against a party alleged to have contravened the laws or regulations which are under the inspector's supervision, without having first to obtain the permission of the higher authorities. He may do so even without giving the alleged offender any previous warning, although in practice he always gives him an opportunity to conform with the law. But the inspecting officials generally issue no warning in the event of a second offence.

The inspector's charge against a person must give all information necessary to estimate the extent of the infraction. The document establishing the charge must be signed by the inspector and by the employer or his representative, and also by the workman in the case of infringements for which the workman is personally responsible. If a party refuses to sign the charge, the inspector merely makes a note of the refusal, giving the reasons therefor, in the report which he transmits directly to the competent judicial authority. A copy of this report is forwarded to the head of the corporative inspection group to which the inspector belongs. In Italy the inspectors and inspecting officials are alone competent to institute legal proceedings before the courts for the judicial enforcement of the laws or regulations which come under their supervision.

In New Zealand actions for breach of an award of the Arbitration Court or for breach of an industrial agreement may be brought before a magistrate's court by an inspector or

by any party to the award or agreement. But an inspector of awards may also bring an action in the Arbitration Court instead of a magistrate's court. In such a case the decision of the Arbitration Court is final. For the enforcement of the provisions of the Apprenticeship Act legal proceedings may be instituted by the District Registrar, or an inspector of awards, and any party to an apprenticeship contract may take proceedings for a breach of them.

The inspectors are usually responsible under Rumanian law for instituting legal proceedings with regard to infractions discovered by them. But certain laws sometimes provide for the institution of proceedings by other government organs. For instance, infractions of the law relating to the closing down of shops and other establishments on Sunday and on legal holidays come within the supervision of different government departments as well as of the presidents and secretaries of chambers of labour or of chambers of industry and commerce, of the local representatives of the police department, the local judges, mayors, notaries and other local officers, all of whom are responsible for reporting such infractions as they discover to the judicial authority.

#### BY THE HIGHER ADMINISTRATIVE AUTHORITIES

When legal action has to be taken for the enforcement of some provision of law, more often than not one of the higher administrative authorities is entrusted with the responsibility for initiating the proceedings, although the inspector who has discovered the unlawful act or omission is generally responsible for collecting the evidence and for making a case against the party whom he has declared in his report to have committed an infraction of the law.

An example of this procedure is to be found, for instance, in the laws of the Province of Quebec, where a contravention reported by an inspector to the chief inspector is communicated to the Deputy Minister of Labour, who may not start legal proceedings without the authorisation of the Attorney-General, as representative of the Provincial Department of Justice, in whose name the action is taken.

In Denmark contraventions of the factory laws are assimilated to infringements of police regulations, so that legal proceedings are always instituted by the police authorities on



behalf of the responsible administrative authority, which is the Minister for Social Affairs

In New York State the proceedings are instituted by the Attorney General's Office in the name of the people of the State and on the information supplied by the inspector

Similarly, the Wisconsin Labour Commission, after endeavouring to bring the offender to reason, hands the case over to the Attorney-General, with the request that legal action should be taken. But there are occasions when the inspectors are unable to secure enough information to enable the Attorney-General to prosecute. If the circumstances show that the employer is violating the law but sufficient facts are not available to prove a case, the Commission resorts to its power to hold a hearing, subpoena the employer and his employees, put them under oath and collect evidence. The testimony of the employees can be used as a basis for prosecution if the offender remains defiant.

In Switzerland, owing to the constitutional autonomy of the cantons, the federal inspectorate must rely on the co-operation of the cantonal authorities for the institution of criminal proceedings against an alleged offender of the federal factory laws.

#### BY THIRD PARTIES

##### *With Permission of Inspector*

There are several countries where, in theory, trade unions and other interested third parties could bring an action before the courts either with or without the permission of the inspector according to the nature of the case, particularly in regard to the enforcement of awards and agreements. In Canada, for instance, trade organisations are entitled to institute legal proceedings. There a deposit would be required of the third party to cover the cost of the action and the inspector's permission would be required under certain legislative enactments. But in practice criminal proceedings are begun only by the administrative authority which is responsible for the enforcement of the particular law.

In India, under the Factories Act, the Payment of Wages Act and the Maternity Benefits Acts, prosecutions may be initiated by third parties with the previous sanction of the inspector.

*Independently of Inspector*

Several laws may be found in Argentina which expressly authorise trade unions and trade associations to institute proceedings before the courts of law against the parties who contravene those laws. Such authorisation does not of course prevent the parties who were wronged by the contravention from suing in their own name, nor does it deprive of any of its rights to prosecute the government department which is responsible for the enforcement of the particular legislative enactment. But no information is available to show the extent to which trade organisations in Argentina have exercised the right thus granted.

In Australia on the other hand the factory legislation stipulates that the trade unions and other interested bodies may complain to the inspector, and he alone may institute legal proceedings after he has obtained the permission of the chief inspector or of the responsible head of the department concerned. But under the provisions for the enforcement of awards of the Industrial Court, proceedings may be initiated before the Industrial Court either by an employer, an inspector, or the higher administrative authority, or again by a trade union, or a member or officer thereof. It would seem that in practice a large number of cases are thus brought before the court each year by officials of trade unions. It should be added that the Industrial Court itself is empowered to initiate proceedings and to enforce industrial agreements as well as its own decisions, which moreover are not subject to appeal.

In theory, any person in Great Britain may lay an information before a court of summary jurisdiction and thus institute a prosecution; but in practice criminal prosecutions appear to be instituted solely by the authorities.

Japanese law also authorises anyone to bring suit for the enforcement of labour laws, but in practice labour complaints are reported to a factory inspector or a police officer who is responsible for taking proper steps according to the nature of the case.

In New Zealand third parties, so far as they are parties to the award or agreement which is the subject of the dispute, may bring an action before the Arbitration Court, but no industrial union or association may institute proceedings unless a resolution to that effect has been passed by its committee of management.

While the Swiss federal factory law does not expressly prohibit the taking of legal proceedings by trade organisations, it would seem that in practice such proceedings are instituted only by the cantonal government authorities

The factory law in the Union of South Africa provides that the Public Prosecutor may initiate a prosecution on information laid before him by any member of the public and under the Apprenticeship Act on complaint of inspectors or of trade unions, whereas prosecutions for the enforcement of an award or agreement under the Industrial Conciliation Act can be initiated by the competent industrial councils through their agents, with respect to parties to the award or agreement. In the cases in which an award or agreement has been declared by the Minister to be applicable to other employers and employees in the same industry who were not parties thereto, then its enforcement used to be left mostly to the supervision of the regular inspectors. But recently the powers of industrial councils have been enlarged so as to enable them on certain occasions to exercise control over non-parties as well as over the parties to an award or agreement

Trade unions and trade associations are not entitled by French law to institute criminal proceedings for the enforcement of labour laws. Apart from labour inspectors, only police officers may introduce a penal action in this respect. But trade organisations may always intervene in such prosecutions and put in a claim for damages. When neither the inspectors nor the police officers take steps, the trade unions have no other right than to bring an ordinary action at law for damages against employers whom they accuse of infringing the law

A distinction is obviously to be drawn between prosecutions before the courts of penal jurisdiction and actions at law before the courts having jurisdiction in civil matters only

The right of trade organisations to bring action before the civil courts is widely recognised, although there are countries where trade organisations have no legal status and consequently cannot appear as parties to an action before any court of law. But a discussion on this subject would scarcely be appropriate in the present Report

It may be sufficient to add that in the cases where trade organisations are parties to collective agreements which have been infringed, they are often entitled to institute the necessary

legal proceedings for their enforcement. They may bring the action either on their own behalf when general rights recognised by the agreement have not been respected, or again they may even bring the action on behalf of one of their members when individual rights have been violated. This is notably the case in the Scandinavian countries, where in some cases the trade organisations are alone entitled to institute proceedings on behalf of their members for violations of their individual rights, when these are founded on collective agreements regulating conditions of work.

But these are more in the nature of exceptional cases which do not directly concern the right of trade organisations or of third parties generally to bring action before the criminal courts for enforcement of social laws, in regard to which examples of the law in various countries were given above.

### § 6. — Rules of Evidence

#### LEGAL PRESUMPTION IN FAVOUR OF INSPECTOR'S REPORT

A very important aspect of the inspector's work consists in the authority which automatically attaches to his statement of facts in connection with the application of the various social laws.

Whether his reports are addressed to an administrative or to a judicial authority, their ultimate value will depend to a large extent on whether or not the facts they affirm may be negatived by a mere affirmation to the contrary on the part of the alleged offender. The burden of proof will necessarily shift from the one party to the other according to the principle adopted, and the number of convictions obtained may vary accordingly, particularly where very little evidence is available one way or the other, and the decision has to be based mostly on presumptions of law.

Generally speaking, the party who makes a statement before a court of law is responsible for adducing the necessary proof in support of it. But in the matter of labour inspection, it will be found that the majority of cases depart from this rule. The competence and integrity of inspectors, as well as the interest of the community as a whole, have weighed in favour of the acceptance of the principle that the truth of the inspector's allegation of facts will be presumed until the contrary is proved.

Even in some of the countries where the labour inspector is looked upon as an adviser rather than as a police officer, the report he hands in describing a certain set of facts is presumed to be a true statement of the facts, just as the police officer's or traffic officer's charge against an alleged offender is presumed justified until the accused can prove its falsehood.

It is obvious enough that the application of the law is made more secure by this legal presumption, but just as it may be rebutted in the case of the police officer, so it may always be disproved in the case of the labour inspector's declarations. The inspector, although an expert in his particular field and generally credited with the absolute integrity which befits a representative of the governing authorities, is none the less liable to human error, but the law in several countries leaves it to the alleged offender to show cause why the inspector's report should not be accepted as an accurate description of the situation complained of. It does not suffice for the accused to deny the charge; he must prove to the satisfaction of the judge or court that the charge is either unfounded or exaggerated.

Some of the countries which have adopted that rule of evidence are Argentina, Australia, Estonia, France, India, Italy, the States of New York, Massachusetts and Wisconsin, to mention only three States of the Union, Japan, and Rumania.

The rule, however, is not universal. For instance, in Great Britain and in some of the countries which have followed the British legal traditions, namely in Canada, New Zealand and South Africa, the inspector appears before the courts on exactly the same footing as the employer whom he accuses; and the evidence of both carries equal weight.

Needless to say that the acceptance or rejection of the principle is closely connected with the acceptance or rejection of analogous rules governing legal proceedings in matters other than disputes arising out of the application of labour laws.

#### MISCELLANEOUS RULES OF EVIDENCE

While the ordinary rules of evidence usually prevail before the courts when they have to decide a case brought forward by inspectors or else by those who merely have an interest in the enforcement of the various labour laws, there will be found

now and then some special rule enacted to facilitate the task of inspectors apart from the above-mentioned legal presumption in favour of the inspector's statement of the facts

In Great Britain, for instance, although there is no general presumption in favour of the allegations made by the inspector in his report, certain rules of evidence contribute to lighten the burden of proof. For instance, if a person is found in a factory at any time at which work is going on or the machinery is in motion, except during the intervals for meals or rest, he is deemed to have been employed in the factory unless the contrary is proved by the employer. The absence of statutory entries in the prescribed registers is admissible as evidence that the Act or Regulations to which the entry refers have not been observed. Also the onus of proof that he has paid the legal wage is placed on the employer and for the purpose of calculating that wage the worker is deemed to have been employed during the whole time he was in the employer's premises unless the employer can prove the contrary.

Equally significant presumptions are found in New Zealand, where the laws require the occupier of a factory, shop or office to show that any dismissal or reduction of wages was not made with the desire to avoid compliance with the provision which prescribes higher pay and shorter hours for certain categories of workers.

In the State of Massachusetts the courts will consider that there is a *prima facie* case of violation against the employer when he does not produce, upon request, the list of minors employed and their employment or educational certificates, or does not keep the required records concerning the names of the women employed and the hours worked, or the remuneration paid under the minimum-wage law.

The foregoing are only a few illustrations of the multitudinous rules of evidence of this nature which exist in the various countries, but they may be sufficient to indicate the extent to which the task of the inspector may be made easier and the enforcement of the law made more secure by a variety of rules of evidence specially applicable to matters coming within the control of the labour inspectors.

### § 7. — Provision for Penalties

The object of the proceedings before the courts is practically always to compel the recalcitrant to comply with legal

provisions or with the orders issued by the inspectors in virtue of special laws. The compulsion may take the form either of fines inflicted by the courts in accordance with the law, or of specific orders or injunctions issued by the court, non-compliance with which would expose the offender to penalties specified by law or by the court. This is the case whether the action is instituted directly by the inspector or by the higher administrative authorities or even by third parties.

As has been seen above in § 3, a similar purpose is pursued by the infliction of penalties by administrative procedure, that is by the inspector himself or by the superior administrative authorities without having recourse to the judiciary.

It follows that in the end effective observance of the law and regulations depends on the sanctions which have been provided for their infringement. The most perfect inspection service will be powerless in many cases unless adequate sanctions can be imposed upon law-breakers. It will not suffice for the inspector to discover irregularities or breaches of the law and resort to such enforcement measures as are at his disposal unless a penalty corresponding to the gravity of the offence can ultimately be imposed in each case. Where the inspector himself has not the authority to inflict an adequate penalty, his efforts may be frustrated if, after having secured a conviction in a court of law, he finds that the courts impose a fine which is insignificant or in any case too small to prevent the recurrence of the offence committed. There is no reason to suppose that there is any general failure on the part of the competent courts to assume their full responsibilities in this respect, though the reports of some inspection services do occasionally appear to indicate that difficulty has been encountered in securing the infliction of adequate penalties on conviction. *A fortiori*, the inspector will to a large extent have wasted his time in carrying out his duties if the law does not provide for any penalty at all and the courts are powerless to impose one. Such cases are no doubt extremely rare, but instances could be quoted.

### § 8. — Appeals

In practically every country the law in matters pertaining to labour inspection, as in other matters, never allows a final decision to be rendered by a subordinate official or by an inferior court unless the subject of the decision is of trifling

importance and the penalty inflicted is relatively small. Not only may the alleged offender have recourse to higher administrative or judicial authorities against the decisions of the inspector, but the inspector or the administrative authorities themselves may sometimes desire to have the judgment of an inferior court rejected or varied by a superior court.

#### APPEAL BY INSPECTOR TO HIGHER ADMINISTRATIVE AUTHORITY AGAINST DECISIONS OF LOWER ADMINISTRATIVE AUTHORITIES

The Yugoslav law offers an illustration of the case where the inspector who has the power to inflict penalties directly upon alleged offenders, but must rely upon the administrative authorities for the enforcement of the sanction, may appeal to the higher administrative authority if the lower administrative authority has failed to enforce the penalty. This right of appeal is obviously necessary if the inspector's right directly to inflict penalties is to have any substance. Moreover the provision of law which requires that the authority responsible for the application of the sanction should within a month inform the inspector of the action taken would be less valuable if the inspector could not protest against measures he deemed unsatisfactory.

In Czecho-Slovakia and Hungary too the inspector, when dissatisfied with the decision of the administrative authority of the first instance with regard to certain action which he asked it to take, may appeal to the administrative authority of second instance and from it to the higher administrative authority.

Similarly in Germany, when the contravention is such that the inspector cannot inflict a penalty directly upon the offender, he makes a report which he communicates to the chief inspector or other competent authorities for the institution of proceedings against the alleged offender. In that case he is sometimes allowed to contest their decision before the higher administrative authorities when the legal action he recommends is not taken.

#### APPEAL BY ADMINISTRATIVE AUTHORITIES TO COURTS AGAINST DECISIONS OF LOWER COURTS

In the countries where the inspector is authorised to bring breaches of the law directly before the judicial authorities, he



is sometimes given the right to appeal to a higher tribunal in accordance with the regular appeal procedure if he is dissatisfied with the decision of the inferior court. Occasionally the particular law which is being enforced contains special provisions in this respect.

In Great Britain, for instance, it is not unusual for the inspector to take a case to a higher tribunal to have the decision of a magistrate reversed or modified. In the cases in which a complainant cannot, in the ordinary sense, appeal against the acquittal of a defendant, he may on a point of law appeal to the High Court by applying to have "a case stated", which means that the higher tribunal will not re-hear the whole case but merely give its opinion on the point of law stated to be the gist of the decision rendered in the lower court. The decision of the lower court is affected according to whether or not it applied the law as stated by the High Court, but to avoid unnecessary litigation the findings of fact are not disturbed.

In the State of New York the law allows an appeal to a higher court when the court of first instance has refused to convict an alleged offender or to inflict an adequate penalty upon him.

Similarly, the factory laws in New Zealand stipulate that an appeal may be made to the Supreme Court by an inspector or by any other person dissatisfied with the judgment of the magistrate's court. In specified cases the appeal may be taken to the Arbitration Court, whose decision is final.

In the U S S R. the inspector may appeal under the regular appeal procedure against the decision of a tribunal before which he had lodged a complaint.

The higher administrative authorities which are responsible for the institution of proceedings before a court of first instance are generally given the right to appeal to a higher court when the decision of the lower court does not achieve the desired results. This is the normal consequence of the fact that in countries where the decisions of courts having jurisdiction with regard to a particular type of dispute are subject to revision by a higher tribunal, the party entitled to bring an action before the one is also entitled to appeal to the other in the event of an unsatisfactory judgment. An illustration of this is found in the Union of South Africa, where the factory law stipulates that the Department of Labour at

whose instigation legal proceedings may be taken before a magistrate's court against an offender may appeal to the Supreme Court against the dismissal of a case or the infliction of an inadequate penalty by the lower court.

The Japanese law also allows the prosecutor who is responsible for bringing the action against an alleged offender to bring the matter before a higher tribunal if he is dissatisfied with the decision of the lower court

The inspectorate in France has no right of appeal against the decision of a police magistrate, but the Attorney-General may either on his own initiative or at the request of the inspectorate, lodge an appeal against a judgment of the correctional court. He may also, if certain conditions are fulfilled, submit a decision of the police magistrate or of the correctional court to the Cour de Cassation

#### APPEAL BY THE EMPLOYER OR HIS REPRESENTATIVE

The employer or the officials of the establishment who are responsible for the observance of the law are generally given the right to appeal either to the administrative authorities or to the courts against the decisions taken by or at the instance of the inspectorate.

There is practically no information available with regard to certain types of decisions which the inspector may have to take. Thus the various laws dealing with labour inspection generally contain no provisions concerning the employer's right to appeal against the inspector's refusal to grant permits for home work, or overtime, or to grant such exemptions as are authorised by law. It would seem therefore that there is generally speaking no right of appeal in such cases. On the other hand provisions may usually be found in national laws showing that appeals may be lodged against the infliction of penalties according to the principles which govern local procedure for appeals in general

But where the employer's right to appeal is of greatest practical importance is where orders have been given by the inspector in virtue of the powers conferred upon him with regard to the steps to be taken by the employer in the interests of the health, safety and welfare of the workers. Such powers, as was explained above in Chapter III dealing with the powers of inspectors, may include the right to refuse approval of

## ENFORCEMENT PROCEEDINGS

plans for installation, extension or modification of a plant until the repairs or alterations indicated by the inspector have been made, and to order the suspension of the operation of an undertaking or of a part of it pending the making of specific alterations.

It is easy to understand how the exercise of such powers might lead to differences of opinion between the inspectorate and the owner of an undertaking. For that reason the owner is often granted, although in varying forms, a right of appeal either to the administrative authorities or to the courts of law, as indicated below.

### *Appeal to Higher Administrative Authorities against*

#### *(1) Penalties inflicted directly by the Inspector*

Just as the offender who has been condemned by a court of first instance is usually allowed to appeal to a higher tribunal, so the offender who has been penalised by the inspector is generally granted permission to lodge a protest with some higher authority against the inspector's decision to inflict a penalty.

In some countries the appeal may be made to the chief inspector or to some higher administrative authority.

Yugoslavia offers an illustration of the case where the party aggrieved by a penalty inflicted directly by the inspector may appeal to a higher administrative authority, in this case the Minister for Social Affairs.

Until a short time ago there was no appeal in Cuba against the fines imposed directly by the labour inspectors for infringements of any social legislation. But in 1937 the President of the Republic ruled that in the case of infringements of the Act concerning the employment of national labour the infliction of a fine should be deemed to be an act emanating from the national labour inspectorate and consequently could give rise to an appeal to the Ministry of Labour.

A legislative decree recently promulgated in Peru gives the alleged offender a right of appeal to the Department of Labour against the infliction of a fine by the district inspectors, the general labour inspectorate or the Labour Office. The person making the appeal must, within a prescribed time-limit, produce a certificate showing that the amount of the fine has been deposited with the Government Office for Trust Funds.

No appeal to the judicial authorities, however, is granted to the aggrieved party

In Venezuela an appeal against the penalties inflicted by administrative procedure may be made to the competent inspector if the penalty is imposed by a person appointed by the inspectorate, or to the Director of the National Labour Office if the penalty is imposed directly by an inspector.

(2) *Orders based on the Inspector's Discretionary Powers*

Denmark affords an example of the case where an alleged offender may appeal to the higher administrative authorities against the orders of the inspector. The owner or lessee of machinery, for instance, may within eight days after the inspector's visit of inspection lodge a protest with the Minister of Social Affairs against the inspector's orders with regard to the measures which the inspector deems necessary for the protection of machinery. In that case the decision of the Minister for Social Affairs is final. The general rule is that an appeal lies to the director of the inspection service against the acts or orders of either an inspector or an assistant inspector. The procedure consists in having an investigation ordered by the director of the inspectorate, who then takes a decision which he communicates to the party concerned. The party concerned is entitled to a further appeal to the Minister for Social Affairs if he is not satisfied with the director's decision, and if the Minister's decision is unfavourable, he is allowed to bring the matter before the courts of law.

In Germany the inspector may issue orders concerning measures to be taken for the health and security of the workers in a plant. Such orders have the force of law unless the owner of the undertaking lodges a protest, as he is entitled to do, with the higher administrative authorities. But the latter will accept the findings of fact as submitted by the inspector, and limit their examination to verifying the conformity of the inspector's orders with the law or regulations.

Appeals against orders issued under the discretionary powers of inspectors in Estonia may be lodged by the party affected before the chief inspector. If the chief inspector cannot admit the appeal, or if the appeal was one against orders issued by the chief inspector himself, then the matter must be taken within three days before a special Committee

composed of a Chairman appointed by the Minister for Social Affairs and of two members, one of whom is nominated by the Minister for National Economy and the other by the Minister for Social Affairs. If the appeal is unsuccessful the State keeps the deposit of 100 crowns which the appellant is required to make when lodging the appeal.

In India the manager or occupier of a factory has 30 days in which to appeal to the administrative authorities against an order issued by the inspector in the exercise of his discretionary powers relating to the health, safety or welfare of the workers. If so required in the petition to appeal, the administrative authority must call upon the aid of two assessors, one of whom is to be appointed by the appellate authority and the other by a prescribed body representing the industry concerned. The order appealed against may under certain conditions be suspended pending the decision to be rendered in appeal.

The administrative procedure in force in Italy since 1932 entitles an alleged offender to appeal to the Ministry of Corporations against the orders or instructions for the infringement of which the inspector may impose a fine. The appeal does not stay the proceedings unless the suspension is prescribed by some special regulations or the Minister has so decided.

New Zealand factory legislation lays down that when the applicant for registration of an intended factory is dissatisfied with the inspector's requisition he may appeal to the local authority. A final appeal may be made by either the applicant or the inspector to the medical officer of health.

In Poland the employer or manager of an establishment who is aggrieved by the written orders of the inspector to remedy certain alleged irregularities may appeal to the regional labour inspector and in the last resort to the Minister for Social Welfare. In the absence of specific provisions to the contrary, the appeal does not operate a stay of execution of the order complained of. But if a stay of execution is requested by the appellant the inspector must grant it unless a serious public inconvenience would result therefrom.

The orders issued by the local authorities in Switzerland in connection with the health and welfare of the workers are subject to appeal by the employer before the higher government authorities of the canton, and from there a further appeal may be taken to the Federal Council serving as a court of last resort.

Peruvian legislation gives the aggrieved party a right of appeal to the higher administrative authorities against the orders issued by inspectors for the protection of the health and safety of the workers. But where the orders are to be carried out within a specified time-limit, the lodging of an appeal will not effect a stay in the enforcement of the measures ordered when those measures are intended to protect the workers against imminent dangers.

In the State of Massachusetts (U S A ) there are provisions of law to the effect that when any person is affected adversely by an order, rule or regulation of the inspection service, an appeal will lie to the associate commissioners within the period of time fixed by them. The commissioner of labour may suspend the operation of the order or rule pending the hearing. A further appeal may also be made to the superior court against an order approved by the associate commissioners.

In Czecho-Slovakia and Hungary the accused may appeal to the higher administrative authority against the inspector's or supervising inspector's decisions and if that authority merely confirms or modifies the decision of the inspector no appeal is allowed against that administrative decision of second instance.

### *Appeal to Courts of Law against*

#### *(1) Penalties inflicted directly by the Inspector*

Where no appeal lies to the higher administrative authorities against the infliction of a penalty by the inspector, it is only reasonable that an appeal to the courts of law should be allowed to the employer or his representative upon whom a penalty has been inflicted directly by the inspector.

In the cases mentioned in § 3, p. 163 above, in which a penalty can be inflicted directly by the inspectors in Germany, an appeal lies to the competent court of law, and the complainant has the right to go directly before the court or else lodge his appeal through the inspection service.

The penal code in Poland gives the aggrieved party a right of appeal to the competent regional court of law against such fines as may be imposed by inspectors for infractions of certain laws or of the orders issued by inspectors under those laws. The decisions of these courts are final, but in certain

cases the inspector has the right to appeal to the supreme court for the annulment of the judgment of the court of first instance.

(2) *Orders based on Discretionary Powers of the Inspector or Other Administrative Authority*

Not only may the employer be granted, as was pointed out above, a right of appeal to the higher administrative authorities against such orders as the inspector may be entitled in some countries to issue in the interests of the health, welfare and safety of the workers, but in some countries an appeal against such orders lies even to the courts of law. For instance, a right of this nature is given the employer under the Australian Act for the inspection of scaffolding, in virtue of which the employer has seven days in which to submit a written protest to the nearest police magistrate, whose decision is final.

In the State of Massachusetts appeals against departmental executive orders, as well as against administrative rules, are brought before the associate commissioners and finally to the superior court. The Wisconsin law allows any aggrieved party an appeal to the circuit court against any order of the industrial commission on the ground that the order is unlawful or unreasonable. The court may refer the order back to the commission if it is found that the commission had issued the order without having had ample opportunity to hear and determine any of the issues raised in the action. Meanwhile all other proceedings are suspended for at least 15 days. And if after investigating the matter the commission finds that the order complained of is in fact unjust or unreasonable, it will substitute for it such other order as is deemed just and reasonable. But it should be added that the right in question has never been exercised, since no action has ever been taken even to test the reasonableness of any of the orders issued by the Wisconsin Industrial Commission during the 27 years of its activity.

In New Zealand, if the applicant for registration of an intended factory considers the inspector's requisition to be unreasonable, he may appeal to the nearest magistrate, who may confirm, reverse or modify the requisition and make a final settlement. He also has the right to appeal to the local administrative authorities.

An appeal to the courts of law is also allowed in Rumania against the orders issued by the inspectors with regard to the health, welfare and safety of the workers. Mere non-compliance with such orders would expose the recalcitrant to the payment of a fine, and to the closing down of his establishment in the case of a second offence.

As has been seen above, the director of the National Labour Department in Argentina acts as court of first instance to judge the contraventions reported by the labour inspector. But against his decision an appeal may be lodged within three days to the court of law which is competent according to the amount of the fine imposed. The judge must render his decision within five days at the latest, and may condemn the offender to be imprisoned if he does not pay the imposed fine within five days from the date of delivery of the judgment. The establishment remains closed until the offender has begun his term of imprisonment.

The factory laws in Denmark and Estonia also entitle the alleged offender to appeal to the courts of law against the decisions of the administrative authorities. In the State of New York too an appeal will lie to the superior court against the decisions of the labour commissioners.

### *(3) Decisions of Lower Courts*

Just as legal disputes on almost any point of law which come before the lower courts are subject to review by the higher courts, disputes connected with labour matters may be referred for final settlement to the higher tribunals.

Australia is one of the countries where the decisions of the courts of summary jurisdiction with regard to the infliction of fines at the instigation of the inspector may be taken to a court of appeal, which is usually the Supreme Court, except in certain cases relating to the enforcement of industrial agreements or of awards of the Industrial Court, where the Industrial Court sitting as a full bench is competent as the court of last resort.

In Great Britain the occupier of a factory who has been convicted by a court of summary jurisdiction may appeal to the Court of Quarter Sessions, which may either confirm, quash or vary the decision of the lower court, or remit the matter to the lower court for a re-hearing. On points of fact the decision of the Court of Quarter Sessions is final,



but on a point of law either party may appeal to the High Court. Similarly, under the Trade Boards Act an appeal may be taken by either party to the High Court against a County Court's decision concerning the recovery of wages. The High Court may order a new trial or order judgment to be entered for either party.

In the Union of South Africa the appeal against the magistrate court's decision inflicting a penalty goes directly to the Supreme Court of that country.

Under the laws of Japan and of the U.S.S.R. the accused may also appeal against the decision of a lower court.

The procedure in France always allows the employer to appeal to the Chamber of Correctional Appeals of the Appeal Court against a decision of the correctional court. The decisions of the police court, on the other hand, are final unless the fine or damages imposed exceed five francs exclusive of the costs of the action, in which case an appeal will lie to the correctional court, whose decision will be final. In either case the alleged offender has ten days in which to lodge his appeal, which will effect a stay of proceedings.

The judgments rendered by the police court, the correctional court or the Court of Appeal may be quashed by the Cour de Cassation for lack of jurisdiction, for violation or erroneous interpretation of the law, or for other reasons specified in the code of civil procedure. But an appeal of this nature must be lodged within three days from the delivery of the judgment which is contested.

Rumanian legislation provides that an appeal may be taken to the ordinary courts of law against the decision of a justice of the peace or of a labour court having jurisdiction with regard to the infractions reported by inspectors. It has been observed above that the court of first instance in such matters is either the justice of the peace or the labour court wherever a labour court has been set up. But there are no labour courts of appeal.

The foregoing illustrations indicate that appeals in matters connected with labour inspection are governed to a large extent by the procedure which applies to appeals in other matters.

## CHAPTER VI

### OBLIGATIONS OF LABOUR INSPECTORS

Since it is the task of labour inspectors to ensure that workers will be protected in accordance with the law, but without any infringement of the employers' rights, which are equally safeguarded by law, they must have the confidence of all parties. Faced with the often conflicting interests of employers and workers, they need for the fulfilment of their task to the general satisfaction to possess not only knowledge, intelligence and energy, but also moral qualities of at least as high an order.

But mistakes and abuses are always possible, and the legislature must therefore be in a position to take suitable measures for preventing and, if need be, punishing acts that are injurious both to the prestige of the inspectorate and to the interests of employers and workers. The general regulations governing public servants in themselves tend to prevent conflicts of interest by prohibiting certain subsidiary occupations or imposing penalties for corruption, abuse of authority, violation of professional secrecy, etc. — questions which lie well outside the scope of this Report. It is sufficient here to state that legislation of this kind applies also to labour inspectors in their capacity of public servants.

In view of the special situation of labour inspectors, the law in some countries also provides special regulations for this class of official. The object of such measures is on the one hand to secure impartiality and independence among the inspectors and on the other to protect trade secrets, etc. These two groups of provisions will be considered in turn in the following pages.

#### § 1. — Measures for Securing Impartiality and Independence among Labour Inspectors

The means adopted by law to secure impartiality and independence among labour inspectors consist of the imposition of certain obligations or of the prohibition of certain acts deemed incompatible with the interests of the service.

## OATH OF IMPARTIALITY

Before entering the service, public officials usually take an oath by which they promise among other things to be impartial in the performance of their duties. Sometimes such an engagement is specifically prescribed for labour inspectors. In the Netherlands, for example, they undertake to fulfil their obligations 'with zeal, conscientiousness and impartiality'.

Further, penalties are provided in the case of inspectors who do not observe such an oath. The Labour Code of Ecuador imposes disciplinary penalties in the case of inspectors who act with partiality or malice. In Hungary the law prohibits an inspector from taking any steps likely to arouse a suspicion of partiality.

It is obvious that labour inspection officials cannot accept awards or favours either from employers or from workers. In some countries the law contains an explicit provision to this effect, e.g. in China, Czecho-Slovakia, Hungary, New Zealand and the United States (Massachusetts).

## SAFEGUARDS OF INDEPENDENCE

There are special risks to an official's impartiality if his service interests are found to conflict with his personal interests. In order to prevent this situation from arising the law usually prohibits officials from engaging in certain activities that may have an injurious effect on the normal working of the service. In many countries the general regulations concerning public servants are considered sufficient, but often there are special regulations in force for labour inspectors or for those categories of inspectors to whom the general regulations do not apply (e.g. in Belgium, for the employees' assistant technical inspectors and the labour supervisors).

The office of inspector may be declared by law incompatible on the one hand with certain industrial and commercial activities and on the other with specified public functions.

*Prohibition of Certain Industrial and Commercial Activities*

Prohibitions of this kind have two fundamental aims. The official is to be prevented from being turned aside from the normal accomplishment of his duties by engaging in some subsidiary activity; and the supervision of undertakings must

not be allowed to suffer from the fact that the inspector is interested in one of the undertakings in question. Naturally, both objects are often dealt with by the same regulation. In the first case, the prohibition applies to certain activities irrespective of whether they relate specially to the undertakings under the official's supervision. In the second, the objectionable activity must have a connection with the undertaking which the inspector is responsible for supervising.

*Prohibition of all industrial and commercial activity* — In some countries labour inspectors are not allowed to engage in any industrial activity (Czecho-Slovakia: all industrial activity is prohibited, whether as owner, manager, superintendent, head of a workshop or engineer, Denmark: such activity is subject to authorisation by the competent Minister, Great Britain: the occupier of a factory may not be an inspector; Hungary: the carrying on of an industrial undertaking, whether on the inspector's own account or on that of another, is prohibited, and Switzerland).

In Belgium and Luxemburg (Bill) the officials covered by the law may not engage in commerce, and this rule applies also to their wives (husbands), children, and relatives in the direct line living in their households. The Luxemburg Bill also prohibits an inspector from running a public house.

In Czecho-Slovakia, Great Britain, Hungary, Ireland and Switzerland (Confederation), labour inspectors may have no interest in any kind of industrial undertaking. The British Act, as well as the legislation in force in Ireland, also prohibit indirect interest in the undertaking or in any process or business carried out therein.

In India an inspector is not allowed to be directly or indirectly interested in a factory or process carried out therein or in any patent or machinery connected therewith.

In Great Britain and Hungary an inspector is also forbidden to be an employee in an undertaking.

*Prohibition of certain activities connected with the undertakings subject to the inspector's supervision* — In some countries the law provides that labour inspectors may not own or manage an undertaking placed under their supervision (Finland, Norway, Sweden). The Norwegian and Swedish laws also prohibit them from engaging in any remunerated employment or business on behalf of such an undertaking.

The Finnish law declares it unlawful for an inspector to hold a licence concerning the processes of manufacture, machinery and appliances used in an undertaking which is subject to his supervision

Under several laws labour inspectors may not have a financial interest in the undertakings subject to their supervision, for example, in Denmark, Finland, France (even after termination of their service), Luxemburg (Bill), Norway (substantial interests), and Sweden

This prohibition also applies in some countries to all indirect participation, e g. in Denmark, France, and Luxemburg (relatives in the direct line) In Finland the law treats labour inspectors for this purpose on the same footing as judges by stating that they are covered by the provisions concerning the challenging of judges

In Norway and Sweden exceptions may be authorised by the competent Minister in particular cases, provided that the interests of the service are not affected

Lastly, it may be noted that in Norway employer and worker members of the Labour Council and the local inspection committees may not make any enquiries or take any official action in the undertakings in which they are interested in their capacity as employer or worker, as the case may be.

#### *Prohibition of Certain Public Functions*

In some countries inspectors are prohibited not only from engaging in industrial and commercial activities but also from performing specified public functions Even apart from any special provisions, it is clear of course that this question is covered by any general laws on public servants or service regulations

In Czecho-Slovakia it is provided in a general way that inspectors may not undertake duties external to their functions, in particular duties relating to the administration of public finance.

The Belgian law prohibits the employees' assistant technical inspectors and the labour supervisors from engaging in any work on the provincial councils and councils of industry and labour, they may not sit in the Legislative Chambers or on the provincial or communal councils According to the Luxemburg Bill, inspectors and their assistants will not be allowed to sit on the communal councils.

In the Netherlands, incidentally, the labour inspection officials must refrain from any interference in disputes between employers and workers, unless they are authorised to do so by the higher authority

## § 2. — Measures for the Protection of Trade Secrets, etc

All public officials are bound to observe professional secrecy, but strict compliance with this rule is particularly important for labour inspectors who, in the course of their activities, are required to enter a number of undertakings, to learn various working processes, to examine the machinery and appliances used and to study conditions of labour, and who, by listening to the complaints of the workers and often also to the confidences of employers, obtain information on the undertaking's power to compete with its rivals. Any abuse of the trust put in the inspector must therefore seriously compromise the prestige of the inspection service itself. Consequently, in most countries the law considers such acts as special offences for which penalties are provided.

A distinction should be made in particular between two kinds of obligations of inspectors: in the first place, those relating to the information they obtain; and in the second, those relating to the persons providing the information.

### SECRECY WITH REGARD TO INFORMATION OBTAINED BY LABOUR INSPECTORS

Although the legal provisions on the subject agree in laying down that labour inspectors must exercise discretion, their form is not the same in all countries. The matters to which the obligation refers are defined in different ways, the manner of its observance varies, and the possible exceptions are formulated differently, quite apart from any differences in the form in which the obligation is assumed (taking of an oath, etc.)

#### *Matters covered*

One group of provisions speaks of trade and manufacturing secrets and working processes in general (Argentina, China, Cuba, Ecuador, Estonia, Finland, France, Luxemburg (Bill), Peru, Poland, Rumania, Sweden, United States, Yugoslavia)

The second group mentions the information recorded in

the undertakings (Netherlands), the conditions existing in the undertakings (Czecho-Slovakia, Germany, Hungary, Norway, Sweden, Turkey), the information obtained concerning the factory or persons employed therein (Denmark, Union of South Africa), or any information obtained in the performance of duties (Australia, New Zealand)

In Great Britain the law also mentions the results of an analysis of a sample taken by the inspector, as well as any particulars of the work and wages of piece-workers

### *Manner of Observation*

Several laws provide for preventive measures. In Hungary and Sweden the inspector may be refused access to the parts of undertakings where secret processes are used

Sometimes the inspector is prohibited in particular from trying to obtain information on facts external to his task (Denmark). In Finland he may not try to obtain information on the commercial situation of the head of the undertaking. In Hungary he is prohibited from putting questions concerning manufacturing secrets or the specialties of the undertaking. He must avoid any question that may directly or indirectly prejudice the commercial interests of the undertaking, but if he considers that sufficient reason is not given for the employer's refusal, he may notify the competent Minister, who decides

In Czecho-Slovakia and Rumania the law does not allow inspectors to consult the books, accounts, correspondence, etc., of the undertaking

When the inspector has obtained information on the points covered by the law, it is his duty not to disclose any secrets. This is the essence of his obligation, and in order to stress the importance of this point, the inspectors in many countries are required solemnly to promise secrecy in the form of an oath or similar declaration

The question arises whether this obligation ceases when the inspector leaves the service. The contrary is expressly stipulated in several laws (Czecho-Slovakia, Poland, Sweden, Yugoslavia).

*In some countries the law applies not only to the disclosing of trade secrets but also to cases in which the inspector uses for his own benefit any knowledge he may have acquired in*

the course of his work (Australia, Czecho-Slovakia, Poland, Sweden) The Norwegian Act specifically prohibits inspectors from copying the equipment and manufacturing processes of which they have acquired a knowledge in an undertaking unless they have been authorised to do so by the person concerned

### *Penalties*

Contravention of these provisions renders the inspector liable not only to disciplinary measures and the payment of damages to the employer but also to penalties, which usually include imprisonment

### *Exceptions*

Although an inspector is bound to carry out his duties without injuring the employers' legitimate interests, this obligation must give way before the interests of the service The point at which this takes place, however, is defined in various ways

As a rule, when the inspector's obligation is confined to observing secrecy with regard to manufacturing processes or trade secrets, his duties in this respect are absolute It should be observed, however, that in Great Britain, Finland and Turkey an exception is made for cases in which this is necessary for the fulfilment of duties (Great Britain, Turkey) or for purposes of prosecution (Finland) In Poland it is provided that in cases where service obligations make it necessary to communicate the information to the industrial authorities, the inspector must transmit it in a confidential report

On the other hand, when the inspector's obligation covers all the information he may have obtained in the undertaking, the law must make it possible for him to make any declarations that are needed for the fulfilment of his duties Consequently, exceptions are allowed for the fulfilment of duties or for the requirements of the service (Denmark, Norway, Sweden), for the purposes of the law (Australia, New Zealand, Switzerland (Confederation), Union of South Africa), for statutory declarations (Netherlands), for purposes of prosecution (Germany, Turkey, Union of South Africa), and for official statistical purposes (Australia)

It may be added that in Switzerland the inspector may not be a judicial expert or, unless authorised by the competent Department, a witness in a case affecting the service.



SECRECY WITH REGARD TO PERSONS GIVING INFORMATION  
TO LABOUR INSPECTORS

Under the ordinary law the secrecy that public officials are bound to observe in accordance with service regulations or general practice also applies to the information and complaints directly submitted to them. In many countries the law contains special provisions of this kind for inspectors. It is in fact important that the persons concerned, and in particular the workers, who are entitled or even bound by law to give the inspector information, should also be guaranteed by law that the exercise of their right will not expose them to disadvantages or retaliation. It is also probable that all the persons concerned, if they can be certain that their names will not be divulged, will collaborate more frankly and loyally with the labour inspectors.

In Peru the law applies only to the workers. In other countries the terms of the law in this respect are more general, the inspector being bound not to reveal the name of the person supplying information, whether worker, employer or a third party (Argentina, Cuba, Estonia, Finland, Italy, Netherlands, Norway, Turkey).

In certain countries it is also provided that the inspector may not inform the employer of the origin of an investigation when this is the outcome of a complaint (Peru, Venezuela). Elsewhere this duty is prescribed by the service regulations or is generally observed in practice.

The principle is not, however, absolute in its application. The name of the person laying the information may be disclosed with his consent. Some laws require explicit consent (Italy, Norway) or written consent (Netherlands).

In Finland and Cuba an explicit exception is made for judicial proceedings, and in the Netherlands for any information that the inspector is bound to supply to the higher authority. In Norway the inspector's obligation ceases if there is no ground for the complaint.

## CHAPTER VII

### COLLABORATION WITH EMPLOYERS AND WORKERS

Throughout this Report it has repeatedly been urged that the parties concerned must collaborate with the labour inspectors in their work. In Chapter IV, for instance, stress is laid on the obligations that such persons, and more especially the employers, should assume in order to facilitate, and indeed to make possible, the supervision of the application of labour legislation. Further, the interested parties can directly co-operate with the inspectors, either by taking an active share in their work or by themselves performing some of the duties of inspection. That is the problem to be dealt with now. Since, however, the scope of this Report does not allow of considering every aspect of a collaboration which in fact exists everywhere and is, in modern States, developing as a result of increasingly close contact between the labour inspectors, the parties concerned and their representatives, special, though not exclusive, attention will be given to such collaboration as is provided for in laws and regulations.

#### EMPLOYERS AND WORKERS ASSOCIATED IN THE WORK OF INSPECTION

Employers and workers are associated with a wide variety of the activities of inspectors. Here reference will be made only to the most typical instances of co-operation, those afforded by the administrative activities of the labour inspectors and by the enforcement of legislation and of measures for accident prevention.

##### § 1. — Administrative Activities

It has been pointed out earlier that the labour inspectors have occasion to assist in the administration of certain laws, more especially where permission must be obtained in advance for exceptions to the statutory provisions. Very often the

labour inspectors or the central authority may not grant such permission until after they have consulted the associations of employers and workers or some other representative body. In view of the multitude and variety of the cases which arise, it will suffice to say that the principle is applied in most national laws and regulations dealing with hours of work, rest periods, the employment of women, children and young persons, etc

An illustration of the practical significance of this form of collaboration is afforded by two particularly interesting legislative provisions.

In Finland the trade unions must be consulted before worker inspectors and municipal inspectors are appointed

A provision directly affecting individual workers is to be found in French legislation divisional inspectors may not give the head of an undertaking power to inflict fines for breaches of discipline and of health and safety regulations without first consulting the employers' and workers' organisations concerned.

The medium for this consultation is sometimes a common organisation, such as a joint board or a labour council, as in the Scandinavian countries. But the functions of these bodies are usually wider in scope, and they will therefore be discussed later

## **§ 2. — Enforcement of Labour Legislation and Prevention of Accidents**

Here collaboration can take a great variety of forms. Whereas in some cases it consists merely in notification by the workers of alleged abuses, in others the employers and workers have an organised share in supervision.

### **INTERVENTION OF THE INSPECTORS AT THE REQUEST OF THE PARTIES**

Reference has already been made to the measures taken to ensure that the workers — who have a vital interest in the adequate enforcement of the law — have access to the labour inspector and opportunities for supplying him with information, etc.: there can be no doubt, however, that the most important part is that played by the representatives of the workers, and more especially the trade unions.

Very often the unions take action as a matter of course. Since they are most directly interested in the strict enforcement of social legislation, industrial associations are particularly well qualified to draw the attention of labour inspectors to undertakings in which the observance of that legislation is defective. In countries where trade organisation is highly developed, a large percentage of the complaints lodged with the labour inspectors comes from the associations.

In this respect some laws specifically grant certain rights to the bodies representing employers and workers. For instance, in the Netherlands, when the industrial council which represents both the employers' and the workers' organisations concerned considers that a collective agreement which has been made binding on a whole industry is not being respected, it may ask the Minister of Labour to have an enquiry carried out by the labour inspectors.

#### ORGANISED CO-OPERATION

Co-operation may be assured by the establishment of joint committees or by the appointment of workers' delegates.

##### *Joint Committees*

There are innumerable committees on which the labour inspectors co-operate with the employers' and workers' representatives, and it is therefore impossible to mention them individually. Such bodies are mainly concerned with industrial safety and health, for instance in Great Britain and the United States (textile, paper, and milling industries), the Netherlands (harbour and safety committees), and Switzerland (Federal Factories Committee), etc.

Collaboration often takes the looser form of conferences summoned by the labour inspectorate and attended by employers' and workers' representatives. In Estonia the inspectors are responsible for organising conferences to discuss the improvement of working conditions. In Poland the regional inspectors meet the representatives of the trade organisations in their area every two or three months, while the district inspectors do so once a month.

In Great Britain it often happens that the factory inspectors conclude agreements with the employers' and workers' representatives in particular industries on the methods of

enforcing the Factory Act and more particularly on the observance of certain rules concerning the safety, health or welfare of the workers. So far fourteen "codes" have been drafted in this way.

### *Workers' Delegates*

In countries where provision is made by law for staff committees, works councils or accredited workers' representatives, one of the tasks of these bodies or persons is to collaborate with employers in improving safety and welfare conditions in the undertakings. This involves an obligation to co-operate with the labour inspectors and a right to accompany them during the inspection of undertakings and to participate in investigations. Such provisions are to be found in Czecho-Slovakia, Estonia, France, Luxemburg, Poland (Silesia) and Yugoslavia.

In Germany, under the Act of 20 January 1934, the confidential council consists of the employer and accredited representatives of the staff. Its duties are to promote mutual trust within the works community, and to this end to discuss all measures for improving efficiency, agreement on and observation of the general terms of employment and in particular the works regulations, the carrying out and promotion of safety measures in the undertaking, etc. The council may make individual members responsible for the enforcement and improvement of safety measures. An Order of 13 October 1937, issued by the Minister of Labour, invites the labour inspectors to secure the co-operation of such persons and to keep in touch with them when inspecting undertakings or investigating accidents.

In Finland the staff of an undertaking may by agreement nominate an accredited delegate to represent them during the visits of labour inspectors. The visiting inspector is required to discuss conditions in the undertaking with such persons in the first place. The delegates may on request obtain from the inspectors an extract from the report if any comments are made on the undertaking or changes and improvements ordered, or in any other case. A workers' delegate may not be dismissed on account of anything he does in that capacity.

It may be noted that in France and in Luxemburg the comments of the workers' delegates are entered in a book

which must be placed at the disposal of the labour inspectors. In Czecho-Slovakia members of the works committee may, when the employer does not carry out proposals they have made in pursuance of the Act, apply to the labour inspectors for a decision. In Yugoslavia the workers' delegates must submit an annual report on their activities to the labour inspectorate.

In Germany, Luxemburg and Sweden special workers' delegates must, and in other countries such as Switzerland may, be appointed to deal more particularly with safety.

In Germany the accredited staff representatives mentioned above are as a rule also safety delegates.

In Luxemburg the inspectors are entitled to attend meetings of the workers' delegates, to summon such meetings and to direct the proceedings.

In some countries workers' delegates are appointed for clearly specified purposes. In New Zealand they must discuss with the employer the means of exit in case of fire; in Great Britain the workers' or trade union representatives are entitled to take part in any coroner's inquest on the victim of an industrial accident or disease.

In some countries the trade union representatives as well as the representatives elected by the staff of an undertaking are entitled to collaborate with the labour inspectors. In Germany a representative of the Labour Front, who in the undertaking is usually an accredited staff delegate and safety delegate as well, must keep in touch with the labour inspectors and the accident insurance organisations responsible for accident prevention. These representatives must notify the Labour Front of any serious accident.

In Peru, Rumania and Yugoslavia the representatives of the trade unions or Chambers of Labour may accompany the inspectors during the inspection of an undertaking. In Latvia the labour inspectors co-operate closely with the Chamber of Labour set up in 1936.

#### INSPECTION DUTIES DELEGATED TO THE PARTIES CONCERNED

The extent to which the workers are eligible for appointment as inspectors has been discussed in the chapter dealing with the staff of labour inspection service. Although there

is a close connection between the two, the problem to be discussed here is quite distinct how far the parties concerned may carry out inspection duties without actually being official inspectors? So far as worker inspectors, workers' delegates, technical experts, etc., i.e. former workers promoted to official positions, are concerned, reference should be made to Chapter II

It should be made clear at the outset that some of the powers of inspectors are assigned, not to given persons, but to their lawfully appointed representatives. And, as has already been observed, although association of the parties concerned in the work of the labour inspectors is now common, this particular form of it is subject to certain limitations. A distinction must be drawn between the functions assigned to joint bodies and those directly assigned to the workers' representatives or to local or voluntary inspectors.

### § 1. — Joint Bodies

Certain joint bodies are sometimes given specific functions to perform in the labour inspection system. In Denmark the Labour Council, which includes, in addition to members appointed by the Government, members designated by the employers' and workers' organisations, must be consulted before the competent Minister takes any detailed decision concerning the activities of the labour inspectorate. Further, the director of the labour inspectorate must inform the Labour Council of any special instructions he issues to his staff.

In Norway the Labour Council, whose membership is based on similar principles (the chief inspector taking part in discussions without having the right to vote), advises the Ministry. Members of the Council have free access to undertakings on the same footing as labour inspectors.

In the administration of labour legislation, labour councils or similar institutions are responsible for allowing exceptions to its provisions under certain conditions, more especially as regards hours of work, conditions of employment of women, children and young persons, etc., for instance in Norway and Sweden.

In some countries joint bodies are attached to the labour inspectorate to deal with special matters. In New Zealand

the committee set up to examine candidates for appointment as inspectors of scaffolding includes a representative of the employers and one of the workers. In Czecho-Slovakia advisory committees for the protection of young workers have been attached both to the central and to the district labour inspection services. In Luxemburg a draft Order concerning labour inspection provides for the appointment of a superior labour protection council to supervise the enforcement and development of labour legislation and the efficient working of the mining inspection service.

In Argentina and in Canada (Quebec) there are joint boards with very wide powers of supervision in regard to wages. In Argentina the joint wage boards for home workers, which supervise the payment of wages, may require the employers to submit their pay rolls. Should the employer refuse to do so, or a breach of the regulations be detected, the boards may ask the National Labour Department to send an inspector to investigate the matter on the spot and to report.

In Canada (Quebec) the parties to a collective agreement made binding by decree must form a joint committee to supervise and ensure the carrying out of the decree. The committee may

- (a) Compel any employer to keep a register indicating the persons in his employ, their competency, the regular and extra hours of work and the wages paid, with mention of the method and time of payment,
- (b) Examine the register and the pay list,
- (c) Verify, as with any employer and any employee, the rates of wages, the hours of labour, the system of apprenticeship and any other provisions of the decree,
- (d) Require under oath from any employer or from any employee, and even at the place where the latter does his work, such information as it deems necessary,
- (e) Require the employer to have a copy of the scale of wages which has been made obligatory, or of any decision or by-law, posted up in a suitable place.

The committee must hear and consider any written complaint from an employer or from an employee respecting the carrying out of the decree.



Infringement of any of these provisions renders the offender liable to penalties. For instance, any employer who fails to supply the necessary information or who hinders the committee in the performance of its duties commits an unlawful act and is liable to a fine.

Every suit for the recovery of a fine must be brought by the committee, which may also claim, on behalf of an employee, any arrears of wages and damages due if the provisions of a decree respecting wages are violated.

## § 2. — Bodies representing the Workers

In some countries *public bodies* representing labour have supervisory powers. In Rumania the Chambers of Labour are entitled to supervise the enforcement of labour legislation and to carry out the necessary investigations in undertakings. The chairmen and secretaries of Chambers of Labour may report breaches of such legislation. In Latvia the Chamber of Labour, whose functions include the investigation of working conditions, may institute enquiries and inspect workplaces with this end in view. It may require undertakings to supply information on all matters within its scope.

In a few countries the organisation of labour inspection is closely bound up with the national system of *industrial organisation*. In Italy this is clearly shown by the use of the term "corporative inspection". In the U.S.S.R. the labour inspectors are responsible to and supervised by the Central Council of Trade Unions. The advisory functions assigned either to trade organisations, as in Finland, or to a joint body, as in Denmark, have already been mentioned.

Although in many countries the laws and regulations respecting collective agreements provide that the enforcement of the agreements shall be supervised by the trade organisations, these bodies do not as a rule have powers similar to those of the labour inspectors. In some countries, however, they are assigned certain inspection duties. Reference has already been made to the terms of reference of certain joint committees. In Australia and New Zealand the trade union representatives have, under the law itself, or in virtue of awards issued under the law, access to undertakings where members of the union or persons engaged in the same trade are employed. The union representatives have the right to question or approach workers

in regard to the enforcement of collective agreements and arbitration awards. Any person hindering a union official in the performance of these duties is liable to a fine, but the official may only approach workers at meal times or during breaks.

### § 3. — Local or Voluntary Inspection

In some countries the official labour inspection service is supplemented by local or voluntary inspectors.

In Norway and Sweden local supervisory committees have duties similar to those of the official inspectors<sup>1</sup>. In Norway the members of these committees are appointed by the town councils and the law provides that at least one member must be a worker. In Sweden the labour inspectorate supervises the work of the committees.

In Poland auxiliary or voluntary inspectors chosen largely from candidates proposed by the trade unions are appointed to supervise, under the control of the labour inspectors, undertakings in their own branch of industry. These inspectors are not entitled to issue orders, they may only visit undertakings and report what they have seen.

In the U.S.S.R. the official labour inspectorate is supplemented by voluntary inspectors who are elected by the staff of the undertakings. Any trade unionist may be elected provided he does not hold an administrative appointment and is not responsible to the administration for enforcing measures of protection and safety. Besides supervising the enforcement of legal provisions, voluntary inspectors also have certain educational functions.

They may not inflict fines for breaches of the regulations, only the official inspectors are entitled to do so.

Further, the labour protection committees which are attached to the trade union committees of establishments employing not less than 50 persons or to the works committees in large undertakings are responsible for seeing that trade unionists have a share in the enforcement of social legislation. The members of these committees are selected from the voluntary inspectors, the stakhanovists, shock workers, engineers and technical staff. The committees assist in the pre-

<sup>1</sup> In Denmark and Finland the local authorities appoint special officials

paration of safety plans and measures and supervise the expenditure of funds appropriated for that purpose. They see to the enforcement of labour legislation and to the proper working of health arrangements and safety measures, they are also responsible for studying the causes of industrial accidents and occupational diseases, taking measures for the prevention of those risks, and helping to teach safe working methods.

The committees take action through the voluntary inspectors and active trade unionists. They must regularly report on their work to the trade union committee of the undertaking.

## CHAPTER VIII

### METHODS AND STANDARD OF INSPECTION

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The inspector's essential function is to inspect establishments. In every country that is the chief means by which he can supervise the observance of the laws and regulations concerning conditions of work and the protection of the workers while engaged in their work.

The work that an inspector performs in his office — receiving visits from employers and workers, and checking the documents (for instance, time-tables and notifications of exceptions) which employers are required to submit as evidence that they are complying with certain provisions — and his official correspondence would be ineffectual if he did not actually visit the establishments.

There would indeed be no practical point in having time-tables in perfect harmony with the law sent to the inspectors by the heads of undertakings if the observance of the time-limits so fixed were not supervised. The notification of accidents would be an empty formality if an inspector did not investigate the causes on the spot and impose measures to prevent the recurrence of similar cases.

It follows that, in all countries, the inspectors' various means of action and supervision, other than visits to workplaces, can only be considered as supplementary devices designed to facilitate the inspectors' work and make it more effective, and that, in practice, the extent of the protection conferred on workers by the law depends essentially on how efficiently the undertakings are inspected.

The purpose of this chapter is solely to consider what the methods of inspection are and by what measures efficiency of inspection is maintained.

Accordingly, the general aspects of the problem will be dealt with under the three following headings: (1) methods of inspection, (2) factors making for efficiency of inspection; (3) frequency of visits in relation to the standard of inspection.

### § 1. — Methods of Inspection

As has been stated above, in all countries visits to undertakings are the inspector's chief means of seeing that the labour laws for whose supervision he is responsible are enforced. Such visits are of two kinds: visits of regular or routine inspection, and check visits, or visits of re-inspection and inspection on complaint.

In the course of a routine inspection, which always takes place during periods when the undertaking is working normally, the inspector visits all the premises where work is done and also any outbuildings treated as workplaces under the laws and regulations. According as his authority is general or limited to the enforcement of specific laws, he investigates the conditions under which all, or only some, of the provisions for the protection of workers while engaged in their work are enforced. With this object in view, he investigates general health conditions, the hygienic conditions particularly prescribed in some undertakings by reason of the work done there, general safety conditions, the fencing, etc., of machinery where machinery is employed, and compliance with provisions prohibiting the employment of certain classes of workers in occupations that are classed as dangerous or unhealthy. He must also see that the prescribed notices are duly posted up. So far as the national regulations permit, he questions persons whom he considers likely to be able to supply information on the observance in the undertaking of the provisions for whose enforcement he is responsible. Lastly, he examines any documents, registers or books which the employers are required to keep or which he is entitled by law to examine for purposes of supervision.

In the course of check visits during working hours, the inspector finds out whether certain specific provisions are being duly complied with. As a rule, the occasion for such visits is an irregularity noticed during a previous inspection, a complaint, or an accident. The object of check visits at other times than during hours of work is to make sure that timetables and periods or days of rest are duly respected. As a rule, an inspector makes such visits when he has reason to suspect failure to comply with legal requirements.

What should be the inspector's conception of his duties in carrying out all these visits? If he notices irregularities, what

general means has he of ensuring that the regulations are complied with ? How effective are the various methods and to what extent are they used in different countries ?

### THE CONCEPTIONS OF INSPECTION

There are two distinct conceptions of inspection as a means of repression and as a means of prevention

As a means of *repression*, inspection is considered mainly as a form of policing, the idea being to secure compliance with the regulations through the deterrent effects of supervision combined with repression, and an inspector's activity being measured in terms of the number of prosecutions which he brings or instigates

Where the underlying conception is *prevention*, the inspector's chief function is, on the contrary, to educate and to advise. He still has policing duties, but such duties assume secondary importance. His aim should be to see that employers comply spontaneously with the regulations, his essential task is therefore to convince them of the social utility of and the justification for the restrictions placed on their freedom of management. But labour legislation is complicated and its enforcement is a delicate matter. The inspector must accordingly instruct and advise the heads of undertakings, and help them to find the most satisfactory solutions to the problems with which they are faced by reason of the regulations protecting their employees. Coercion should only be used to secure compliance when every form of persuasion has been tried and warnings have been disregarded. The efficiency of labour inspection is no longer measured in terms of repressive activity but, on the contrary, by the extent to which repression is avoided, a prosecution being considered — as it is officially in the State of Wisconsin — a confession of failure.

Between these two extremes there are *mixed* systems, some of which lay more stress on prevention and some on repression. The aim is still to secure voluntary compliance with the regulations, but the inspector is given a wider choice of measures than under the preventive system just described. Further, coercion is considered as a valuable deterrent and it is not therefore systematically avoided

## THE METHODS APPLIED IN THE VARIOUS COUNTRIES

*Criteria for classifying the Methods*

In some cases, the conception of the functions of the inspector and the methods by which he is to secure compliance with the provisions he is responsible for enforcing are defined by law. This is so in Argentina, Chile, Finland and Sweden.

Although in such cases there may in practice be considerable deviations from the statutory principles so laid down, if only because the difficulty of applying rigid methods was not foreseen when they were prescribed, it is easy to determine what the general method of inspection is in the countries concerned.

It often happens, however, that the general method of inspection results from administrative conceptions or customs which have taken root gradually and whose observance by the inspectors is supervised by higher authorities.

Where this is so, the method of inspection is less easy to determine. It must be inferred from certain criteria and from information from various administrative sources, more particularly the inspection reports.

The criteria in question include the following

The relation between the number of visits carried out and the number of prosecutions ;

The relation between the number of establishments under the supervision of the inspectors and the number of prosecutions ;

The extent to which the inspector is required to give warning before proceedings are instituted ,

The extent to which the inspector is required to take repressive measures whenever he discovers a contravention

Some caution must, however, be exercised in the application of these criteria, though their significance is unquestionable. Thus the relation between the number of prosecutions, on the one hand, and the number of visits carried out or of establishments supervised, on the other, only gives an approximate idea of the extent to which inspection is repressive, and caution must be exercised in comparing the ratios for different countries.

The proportion of prosecutions is influenced by the nature and size of the undertakings and the ground covered by the laws with which the heads of undertakings have to comply. All these factors vary considerably from one country to another. Other factors, such as the application of recently enacted legislation which is difficult to enforce or which encounters general hostility among employers, may also affect the contravention rate. For instance, legislation prohibiting night work in bakeries alone accounts for a considerable proportion of the prosecutions in countries that have passed such legislation. In New South Wales 30 per cent. of the prosecutions in 1937 under the Factories and Shops Act were for breaches of the law regarding night work in bakeries, while in France the number of such prosecutions is equal to that for offences against all the health and safety regulations.

Moreover, the imposition by law of an obligation to issue a warning before taking proceedings or to prosecute immediately whenever an offence against certain regulations is detected can be regarded only as a limit placed on the inspector's repressive zeal in the one case or on his indulgence in the other. It does not affect the general method of inspection imposed by administrative instructions in the case of provisions to which the obligation does not apply.

Accordingly the criteria cannot be considered in isolation, but only in relation to the facts of the situation as a whole.

#### *The Methods in Application*

A purely repressive system is applied only in a small number of countries. The most typical example is to be found in Argentina, where the Act concerning the enforcement of labour laws and the supervision of such enforcement requires the supervisory authorities to initiate proceedings in the case of every offence directly observed and even of those reported by third parties.

The effect of these binding provisions is strengthened by the inspector's personal interest in the application of coercive measures when offences against labour laws are detected, since he receives 10 per cent. of every fine inflicted for an offence he reports.

In Rumania, Bulgaria and Latvia the police function of the inspector still appears to be to some extent predominant,



though the law itself does not contain any formal requirement to that effect.

In Rumania, during 1937, for 16,220 visits to plants there were 9,213 prosecutions, or approximately two prosecutions for every three visits. In Bulgaria there were 20,000 prosecutions in 1937 for 64,496 visits, or one prosecution for every three visits. In Latvia the ratio in 1936 was one prosecution to eight visits.

These figures include in Rumania prosecutions for offences against the regulations concerning employment agencies, and in Bulgaria prosecutions for offences against social insurance legislation, since the inspectors are responsible for supervising the enforcement of that legislation.

The preventive system, as described above, is applied in Chile, Finland, Sweden, Great Britain, some States in the United States, New Zealand and Denmark.

In Chile the inspector's task is defined by binding provisions contained in the Decree of 15 November 1933. The inspector must secure the enforcement of the Act by persuasion and conciliation without having recourse to his powers of coercion except where this is necessary. Stress is also laid on the educative aspect of his duties. These provisions are strengthened by others concerning the inspector's duties once the inspection is over. Immediately after an inspection, the inspector must inform the head of the undertaking, orally or in writing, of what he has observed, or he must make a note of any observations and details he considers necessary with a view to instructing or notifying the head of the undertaking by letter over his own signature or that of his chief. Thus, the rule is that warning must be given before penalties are imposed.

The same care is taken in Finland to see that inspectors adopt preventive methods. A decision of the Council of State dated 4 March 1927 provides, in section 2, that the inspector must try to convince employers and wage earners of the utility of protective and precautionary measures. He must give them explanations, advice and instructions concerning the protection and welfare of wage earners. As in Chile, these provisions are strengthened by definite instructions as to what the inspector must do when the visit is over. If irregularities have been observed, the inspector must comment on them in writing. But he is required to be firm in certain

cases If the employer does not seem disposed to comply with the regulations, the inspector must issue not merely a warning, but an order to set the matter right within a given time. If the employer refuses to comply with the order, the inspector cannot, however, initiate a prosecution He must ask the employer for explanations and forward the papers to the Minister This lengthy procedure suggests that the administration hopes the contravention will have ceased before it becomes necessary to inflict a penalty

In Sweden the law is just as definite upon the essentially preventive functions of inspection The inspector must help the employer by supplying him with explanations, advice and instructions In so doing he must always consider how in each particular case the purposes of the Act can be achieved with the least trouble for the employer

In Poland inspectors are likewise required by law to adopt preventive methods

In the State of Wisconsin (U S A ), which in this respect applies the same methods as several other States, the inspectors must, in the event of a contravention, explain the nature of the offence orally to the head of the undertaking or his representative These oral comments are reported by the inspector to the higher authorities, who, in dealing with the offender, may apply pressure in varying degrees as follows

- (1) a letter of warning ,
- (2) a hearing to show cause why prosecution should not be begun ,
- (3) notice to the offender that the Attorney-General has been requested to begin prosecution

Action is taken in court only if the various methods of persuasion fail.

In the State of Connecticut (U S A ), where similar methods are applied, 1,958 injunctions were issued between 1 July 1934 and 30 June 1936 in respect of 13,279 visits There were only 62 cases in which failure to comply with the injunction was followed by prosecution. Thus, the ratio of prosecutions to visits was only one to 215.

In Great Britain considerable stress is laid on the educational duties of inspectors. During 1937, 79 lectures were given by factory inspectors. The preparation of employers and

workers for the enforcement of new provisions is considered as one of the inspector's essential tasks. During 1937 the factory inspectors prosecuted in only 2,347 cases, the number of visits being 308,061 and the ratio of prosecutions to visits one to 130.

Approximately the same proportion is found in New Zealand for the same classes of establishment. one prosecution to 133 visits.

In Ireland in 1937 the ratio of the number of firms prosecuted to the number of premises visited was about 1 to 104.

In Denmark during 1936 there was only one prosecution to 229 visits.

A combination of the two methods, in varying proportions, is applied in a number of countries. This is the case in France, Hungary, Japan, Lithuania, Massachusetts, the State of New York, the Netherlands, the United Provinces in India, and Switzerland.

In the Netherlands a binding provision prescribes a system which is neither entirely preventive nor entirely repressive. Under section 5 of the Labour Inspection Order, 'the officials of the inspectorate shall, so far as possible, reconcile the legal requirements which they are to assist in enforcing with the needs of the persons concerned in the work'.

As a rule, however, the only legal provisions that are significant of a mixed system of inspection are those requiring the inspector either not to prosecute without having first issued an injunction when he has detected an offence against certain regulations, or on the contrary to prosecute without warning in specific cases.

Provisions requiring the issue of an injunction to enforce certain regulations are found in France, Japan, USSR, Yugoslavia, the Union of South Africa and the State of New York. It may be added that in France the number of provisions in respect of which injunctions must be issued was considerably reduced in 1931.

The number of countries where the legislature seems to have feared that the inspectors might be too indulgent is smaller. In Estonia the Act provides that the inspector must prosecute when the offence is deliberate, this means that coercive measures are applied in a great many cases. In the State of Massachusetts proceedings are taken whenever a

breach of the regulations concerning the weekly rest and hours of work is observed unless that breach was unintentional. In France a formal report (*procès-verbal*) must be drawn up in the case of any accident to machinery and to steam pipes and containers. In Lithuania measures of repression are taken whenever an accident due to a breach of an Act or Order occurs.

In most countries the custom, in the absence of any legal provision, is to prosecute without warning for all accidents due to some fault of the employer, or when the offence is deliberate, or when there are circumstances which make the offence particularly serious.

The severity of the repression in countries where the repressive and preventive methods are applied in combination varies greatly from one to another. Recent statistics show that in the Netherlands and Czecho-Slovakia there is one prosecution to every nine visits. In Switzerland the Federal Inspectorate prosecutes once for every 19 visits and in the Central Provinces and Berar (India) the ratio is one to 32. In France during 1936, 4,291 offences gave rise to proceedings in 1,046,635 establishments covered by inspection. In Japan 49,942 offences detected in 1937 were followed by 45,761 official reproofs and only 1,181 prosecutions. In Hungary, where 27,937 irregularities were reported, proceedings were taken in only 263 cases.

### *Opinions on the Methods*

The remarks that follow are based on complaints made either by Governments themselves or by the parties directly concerned as to the operation of inspection services.

The general view is unfavourable to the purely repressive system under which labour inspection is mainly a police function. Nowadays it is held that laws or regulations protecting the workers cannot be properly enforced without the co-operation of the employers. The effect of drastic repression is by no means to create an atmosphere of social peace or to make industrial relations more equitable and harmonious; on the contrary, it promotes hostility to and lack of understanding for labour legislation and suspicion and resentment towards the workers, who are held responsible for the coercive measures. It should not be forgotten that

drastic repression by inspectors often leads to the dismissal of workers

Where the general method of inspection is essentially preventive, it gives rise to but few criticisms, and they are of secondary importance. Excessive leniency and delay in the infliction of penalties is in some cases held to interfere with the regular and proper enforcement of legal provisions.

The use of the two methods in combination does not appear to give rise to criticism, so long as the inspectors are allowed considerable discretion in choosing between leniency and immediate repression.

## § 2. — Efficiency of Inspection Visits

### PROBLEMS INVOLVED

Whatever the value of the general method of inspection may be, workers cannot be protected in practice unless certain measures are taken to ensure that establishments are inspected efficiently.

There is a great variety of factors making for efficiency. It may even be said that most of the problems raised by labour inspection incidentally affect the efficiency of inspection visits. Some of them, however, have a more direct influence and the purpose of the present section is to examine these.

The principal factors that affect the value of the visit will first be enumerated, and reference will then be made to the influence on inspection of some of these factors that have already been considered in connection with various general questions. Lastly, the special problems raised by inspection visits and so far not dealt with at all will be discussed.

### FACTORS AFFECTING THE EFFICIENCY OF INSPECTION VISITS

The following have a decisive influence on the efficiency of inspection visits:

The professional competence of the inspector, his personal aptitude for inspection work, his impartiality, and his independence with regard to employers,  
The extent of his powers of access to establishments,  
The measures taken to facilitate his investigations and to enable him to exercise his supervision judiciously,  
The deterrent effect of penalties,

Certain aspects of the workers' co-operation in inspection ;  
The timing of the visit ,  
The unexpectedness of the visit ;  
The time the inspector can give to the preparation of the visit and to the visit itself ,  
The extent to which the employers and workers have been educated in regard to the requirements of labour legislation and industrial health and safety problems

FACTORS MAKING FOR EFFICIENCY WHICH HAVE BEEN  
CONSIDERED IN OTHER CHAPTERS

No discussion of the efficiency of inspection visits would be complete without a reference to the significance in this respect of the methods employed for selecting and training inspectors, the inspector's right of access to establishments, the measures specially taken to facilitate his supervision, the deterrent effect of penalties and certain aspects of the workers' co-operation in inspection. All these questions have been dealt with in various chapters of the present Report.

The inspector's personal qualifications have a decisive influence on the value of the visit. The judiciousness of the points an inspector selects for comment in the undertakings he visits will depend on his professional competence, that is, on the extent of his technical knowledge, the employer's readiness to comply, as a matter of common sense, with the regulations will largely depend on the inspector's aptitude for his duties, which finds expression in his natural authority and persuasiveness. Further, the inspector's impartiality and his independence with regard to employers add to the authority conferred on him by his office and greatly facilitate his work.

The extent of the inspector's power to enter establishments and their annexes also has an important bearing on the efficiency of the visit. The wider the inspector's right of access, the greater is the scope of his activities.

No less importance attaches to certain measures taken to facilitate the inspector's supervision, such as the obligation laid on employers to keep specified registers, and to post up the names of the workers affected by particular methods of distributing hours of work. For instance, the only method of quickly and reliably checking observance of the statutory rest periods is to examine a roster giving the names of the

workers employed in rotation and their hours of work, and to call over the names of the workers present

The employer's fear of possible penalties undoubtedly contributes to making a visit of inspection more effective. It would be idle to expect that the employer's good will and the inspector's authority alone would suffice to ensure proper enforcement of the law. There can be no doubt that penalties act as a deterrent and confer additional force upon the instructions and advice which inspectors have occasion to give in the course of visits.

Certain features of the workers' co-operation in labour inspection also help to make visits more fruitful. The participation in the visit of the workers' representatives in the establishment, the questioning of staff, the examination of any works register in which members of the staff enter and sign comments on the enforcement of protective legislation, all supply the inspector with information of immediate practical value, no prior dissimulation or alteration in the lay-out of the establishment being possible. Further, the existence of direct relations between the inspector and the workers or their trade organisation outside the establishment has a no less favourable influence on the efficiency of inspection visits. It enables employees to complain of contraventions they have observed or of which they have knowledge. Such complaints, when justified, draw the inspector's attention to definite points in regard to which his supervision is most necessary and thus make the visits more effective.

#### SPECIAL PROBLEMS RAISED BY THE INSPECTION OF ESTABLISHMENTS

As has been pointed out at the beginning of this section, the efficiency of inspection visits also raises certain special problems. These relate to—

The timing of the visit,

The unexpectedness of the visit,

The time the inspector can give to the preparation of the visit and to the visit itself;

The extent to which the employers and workers have been educated in regard to the requirements of labour legislation and industrial health and safety problems.

Each of these points will be considered in turn.

*Timing of the Visit*

The time of the year, the day, and the hour chosen by the inspector for his visit to an establishment very often affect the efficiency of the inspection.

Most undertakings are particularly busy at a certain time of the year and it is then that the abuses an inspector should detect mostly occur. It is during such periods of great activity that workshops are overcrowded, that young workers are employed on work prohibited for persons of their age, that rest periods are suppressed and hours of work exceeded.

Moreover, the enforcement of certain provisions concerning industrial health only calls for supervision at certain times of the year. This applies for instance to provisions concerning the temperature in workplaces, since a justified criticism that the temperature is too low can be made only during the cold season, while an excessively high temperature in some branches, such as finishing industries, is only likely to be found during the hot season.

The days on which and hours at which visits are made are also significant, when the object of the visit is to supervise the enforcement of legal provisions concerning hours of work and rest. The legal limits of working hours are more often exceeded on certain days of the week, according to the establishment concerned, or at certain hours of the day when work begins or ends. Further, the choice of the day and hour also affects the efficiency of the visit when certain dangerous or unhealthy processes, which may not be carried out unless specified health and safety measures are observed, take place only on certain days or at certain hours. Reference may be made by way of example to the handling of inflammable liquids in most dyeworks, and the sorting of incoming linen in laundries.

*Unexpected Visits*

The results of a visit are conclusive only if the visit is unexpected. It may even be said that for detecting certain offences, a visit which can be foreseen is useless. This is true, for instance, of visits made to check observance of prescribed hours of work, the weekly rest and the prohibition of night work, for if they are announced beforehand either



there will be no breach of the regulations while the inspector is on the premises or the employer will make the detection of any breach impossible

Even a visit for general inspection purposes loses some of its value when it is expected. If the employer expects the visit, the inspector will find everything in order. unhealthy premises will be unoccupied, machines that are not fenced or are insufficiently fenced will not be in use, and workers whose employment on work of certain kinds is prohibited will only be employed on authorised work

Why then do not inspectors always make surprise visits ?

In some cases it is customary to warn employers of the inspector's next visit. Sometimes there are practical reasons for doing this which are peculiar to the country concerned. In the U S S R. an Order of 14 August 1925 makes it compulsory for the management of undertakings to provide inspectors with means of transport if the distance from the railway station to the undertaking exceeds three versts. Clearly, if the inspector is to make use of this facility, he must notify the management of the date and hour of his arrival

In some cases the lay-out of the premises is such that the inspector cannot expect to take the employer by surprise. This drawback has been mentioned in several countries with reference to the prohibition of night work in bakeries, since the premises on which the bread is made are usually located in courtyards to which a number of tenants have access and which are locked at night. In Estonia the difficulty has been overcome in the Act of 2 December 1936 by making it compulsory for employers whose bread-making premises are located in a courtyard to deposit at the nearest police-station, at the inspector's request, an undamaged key to the gate of the courtyard giving access to the establishment; and it is made illegal to screen the windows in such a way that persons outside cannot see what is going on inside

It is, however, chiefly in the case of establishments outside the district in which he resides that an inspector who has no personal means of quick transport is unable to pay unexpected visits. If he uses public passenger transport services and makes a prolonged stay in an unimportant locality, he attracts the attention of employers

*Time necessary for Inspection*

Maximum efficiency cannot be secured when the visit is insufficiently prepared or the inspector does not give enough time to supervision in the undertaking. A visit will, of course, be more effective if the inspector has first examined the appropriate file so as to ascertain the size of the undertaking and the conditions noted there in the course of previous inspections.

Complaints that inspectors do not have enough time for visits are made in many countries. It is suggested that inspectors have too many subsidiary duties and too much administrative work (France, Czecho-Slovakia, Switzerland and the United States of America), and that they have too many undertakings to inspect.

The average number of undertakings an inspector has to supervise varies considerably from one country to another. In New Zealand, the United States of America (New York and Wisconsin) and Japan it is less than 250. It is about 300 in Estonia, 500 in Switzerland and Denmark, 800 in Germany and Ireland and 900 in Czecho-Slovakia and Great Britain (factory inspection). In the Netherlands it varies between 1,500 and 2,000 and in Egypt it appears to be as high as 7,000.

These figures are not absolutely comparable. Various factors may make them more or less significant, such as the nature and size of the undertakings supervised and of the staff employed there (some inspection services only have to deal with industrial establishments employing a minimum number of persons), and the concentration of the undertakings round the inspector's place of residence or their dispersal over a wide area.

*Extent to which Employers and Workers are educated in regard to Labour Legislation and Protective Measures*

The last factor in the efficiency of inspection visits is the extent of the employers' and workers' education in regard to labour legislation and protective measures. If employers or workers are misinformed or insufficiently informed about the laws in force, the inspector will have serious difficulties to cope with in the course of his visits, which will consequently be less effective.

The inspector's work will be much harder if he has to deal with employers who are unaware of their legal obligations as regards labour conditions (hours of work, prohibition of night work) or industrial health and safety. Experience shows that in every country these are the employers with whom inspectors have to be firmest and to resort to coercive measures.

The ignorance of workers may also make inspection less effective. A worker who does not appreciate the value of the rules laid down by an inspector with regard to health and safety is inclined to consider them superfluous, he is definitely hostile to them because of the slight inconvenience to which compliance may put him and his hostility reinforces that of his employer. For instance, workers sometimes object to wearing the safety glasses or masks prescribed by inspectors as a protection against harmful dusts and gases, they may stop up ventilation and exhaust ducts, or destroy the safety devices on dangerous machinery.

In some countries the resistance of workers to health and safety measures prescribed by inspectors is considered so detrimental to inspection that it has been made a punishable offence. In Denmark and Iran a worker who resists or who interferes with the efficiency of health and safety measures is liable to be fined. In Sweden there are similar provisions concerning the protection of machinery.

It may be added that a great many of the unjustified complaints addressed to inspectors, which account for unnecessary inspections and so diminish the inspector's efficiency by dispersing his efforts, are due to the workers being insufficiently informed about labour regulations.

Reference should be made to the number of unjustified complaints and their adverse effect on the standard of inspection. In Great Britain, out of the 5,329 subjects mentioned in complaints received by the factory inspectors in 1937, 866 concerned matters outside the inspectorate's jurisdiction, and only 50 per cent. of the remainder were substantiated upon enquiry. In New Zealand, in the case of 1,124 complaints out of 3,307 received in 1937, no offence had been committed. In the Netherlands 60 per cent. of all the complaints received in 1935 were unjustified. In the last report of the Belgian inspection service it was estimated that 85 per cent. of the complaints were unjustified and were due to ignorance of legal provisions.

In many countries it has been found that, if a sufficiently high standard of inspection is to be maintained, employers and workers must be taught the value of labour, health, and safety regulations and convinced of the expediency and efficiency of protective measures.

This work of education devolves in the first place on the inspectors themselves. In most cases the duty has been assigned to them by the administrative authority and, in some cases, by definite legal provisions.

In Chile inspectors are required by law to popularise and promote knowledge of labour legislation by means of lectures and publications. In Greece, under a Decree of 12 February 1931, each district inspector must give lectures to police officials, employers and workers on the main provisions of laws and decrees, their significance and the ways in which they are enforced. In Bulgaria inspectors have similar duties. In Belgium the duties of medical inspectors include teaching workers the most useful facts about the prevention of occupational diseases and promoting recourse to rational methods of improving health (Royal Order of 6 March 1936). In France and Great Britain lectures are given every year by the inspectors, more particularly when new legislation has been passed.

The inspector's opportunities for educational work are, however, necessarily limited and Governments have devoted attention to devising other methods of conveying information to the persons concerned.

Industrial health and safety museums, open to the public, exist in a great many countries, such as Denmark, Estonia, France, Great Britain, Hungary, the Netherlands, Poland, Switzerland and the United States (New York State). These museums are kept abreast of the most recent discoveries concerning industrial health and safety. In Amsterdam an instructor is attached to the museum and demonstrates the use of new equipment. The museum publishes a special safety review. The New York museum, which remained for a long time in one spot, was recently transformed into a travelling exhibition, which is sent wherever it would appear to be necessary, lectures being given to illustrate the significance of the exhibits.

In some countries, such as Belgium, Denmark, Great Britain, the Netherlands and Poland, the administrative

authority publishes and distributes on a wide scale pamphlets and posters explaining regulations or dealing with special questions of health and safety. In France, in all State schools where heads of undertakings, engineers, foremen and even skilled workers are trained, the curriculum includes instruction in labour, health and safety laws and regulations, with a view to the future work of the pupils. Every year the College of Arts and Crafts in Paris organises an evening lecture course on the physiology of labour, industrial health and accident prevention, attendance being free of charge and open to all. Similar lecture courses are given in other countries, for instance the Netherlands.

It may be added that in most countries there are private associations dealing with accident prevention, which are supported by Governments and aim at providing workers and employers with the necessary practical instruction. Reference may be made here to the important "safety first" movement which has recently developed in the English-speaking countries.

### § 3. — Frequency of Visits

#### PROBLEMS INVOLVED

Thoroughness of inspection visits is not alone sufficient to guarantee complete protection to the workers. It is necessary in addition to make certain that inspections are carried out at sufficiently frequent intervals, so that the inspector's supervision is continuous in character. A visit of inspection, even when the inspector finds no occasion to make an observation or issue an order, is still useful. It gives the inspector an opportunity for taking preventive steps and giving advice and instruction. On the other hand, if visits are infrequent, their deterrent effect is reduced, and employers may be encouraged to break the law.

An attempt will be made below to determine the principles governing the frequency of inspection in the different countries. This will be done first of all on the basis of the laws or administrative rules in force, and subsequently on the basis of actual figures.

#### PRINCIPLES GOVERNING FREQUENCY OF VISITS

In some countries the legislation prescribes the intervals at which undertakings should be visited, but more generally these intervals are fixed by administrative instructions.

## THE ORGANISATION OF LABOUR INSPECTION

Statutory provisions concerning the frequency of visits exist in Chile, Czecho-Slovakia, Finland, Hungary, India, Lithuania, Rumania, Switzerland and Yugoslavia

In Yugoslavia the Act of 20 December 1921 makes it compulsory for the provincial inspectors to visit all establishments and undertakings in their district at least twice a year In India the Factory Rules of certain Provinces lay down the principle that non-seasonal factories must be visited twice a year and seasonal factories once each season In Finland and Switzerland the inspectors must, as far as possible, visit each establishment once a year In Czecho-Slovakia and in Hungary they are required to inspect factories and large establishments at least once a year

In Lithuania and Rumania the legislation does not define the maximum interval between successive visits, but merely indicates that inspections should take place frequently Similarly in Chile the provisions concerning inspection merely state that the inspector must visit the establishments subject to his supervision regularly

In Belgium the legislation prescribes the time to be spent by the inspector in visits to establishments labour supervisors (men and women) must devote eighteen days a month to such visits

In some countries the laws merely indicate the categories of establishments to which the inspectors should pay special attention In Sweden section 25 of the Act of 12 June 1931 lays down that the inspectors must devote particular attention to inspecting undertakings in which there is a risk of accidents, diseases or other dangers which the law is intended to prevent

In France the inspectors are instructed to devote special attention to establishments employing large numbers of persons or involving special dangers, or in which offences most often occur Complaints must be investigated at once, and immediate enquiries must be carried out in case of accidents

### ACTUAL FREQUENCY OF VISITS

The rules mentioned above give no indication of the actual frequency of visits, for various factors may prevent their strict enforcement These factors include a shortage of inspectors, an excessive number of accessory duties, or transport difficulties. The only source of information as to the

degree of activity of the inspectors is to be found in their reports

The ratio of establishments visited by the inspectors during the year to the total number of establishments subject to supervision is one of the most interesting data in this connection. The ratio varies very considerably from country to country. In 1936 it was 96 per cent in Denmark, 86.4 per cent in India, 75 per cent in Hungary, 70 per cent in Bulgaria, 61.4 per cent in Ireland<sup>1</sup>, 44 per cent in Poland, 38 per cent in Germany, and 37 per cent in Czecho-Slovakia, for all establishments. In the last-named country the proportion was 69.3 per cent if only industrial establishments are taken into account.

In Australia (Tasmania) and the United States (New York and Massachusetts) it is reported that all establishments are visited once a year. In addition, quarterly inspections are made in Massachusetts in establishments figuring on a special list as being deserving of particularly frequent visits for various reasons. In Wisconsin the average interval between two inspections is eighteen months, but building inspectors go through their districts twice a year. In Great Britain the factory inspectors aim at visiting the more important establishments at least once a year, and those in which the risks to health or safety are slight once every two years. Quarterly visits are made to establishments governed by special provisions.

Another index of the activity of the inspection services is the number of visits made to check compliance with orders. Some establishments may be visited two or even three times in the course of the year by the inspector if circumstances so require and particularly if the inspector has noticed defects or received complaints. In Germany, for example, 247,358 establishments were visited, but the number of visits was 353,553. In Rumania in 1937, out of 16,220 visits, 5,242, or almost a third, were special visits in order to check certain points. In Estonia in 1937, 5,772 visits were paid to 3,876 undertakings, and in Denmark 39,633 visits were paid to 36,764 establishments. In 1937, in the Netherlands, out of 131,275 visits, 56,537 were complete inspections and 74,738 were partial inspections.

<sup>1</sup> The percentage for 1937 was 95.9

## CHAPTER IX

### LABOUR INSPECTION REPORTS

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In all organised systems of inspection, it is necessary nowadays, for reasons inherent in the nature of the institution itself, to establish periodical and annual reports on the activities of the inspectors. It would be impossible to exaggerate the importance of such reports as aids to the proper enforcement and administration of labour laws and regulations.

The periodical reports of inspectors enable the central inspection authority to exercise constant supervision over enforcement in various parts of the country and thereby to ensure uniform supervision throughout the national territory; while the annual reports keep public opinion, and particularly Parliament, informed of the extent to which labour legislation is actually being enforced and of any gaps that should be filled in such legislation or reforms that ought to be introduced.

The periodical and annual reports are also of considerable interest to the international public and particularly to the International Labour Organisation. Internationally, the reports afford an indication of the real standard represented by national laws and regulations. Further, they enable the persons concerned in the various countries to compare their experience and to draw useful conclusions as regards the improvement of their own methods of supervision.

Because of the national and international significance of such documents the 1923 Session of the International Labour Conference strongly recommended that States should regularly publish periodical and annual reports on labour inspection.

The circumstances in which periodical and annual reports are supplied will be considered briefly in turn.



## § 1. — Inspectors' Periodical Reports

### PERIODICITY OF REPORTS

In order that the central inspectorate may exercise constant supervision over the activities of subordinate staff, periodical reports should be submitted at as close intervals as possible, though the quality of the reports should not be allowed to suffer from their frequency.

In this respect, the practice of different countries varies rather considerably, inspectors being required to submit daily, weekly, monthly, quarterly or annual reports.

In Argentina, Cuba and some of the States of the American Union such as New York, labour inspectors must submit *daily* reports on their activities to their chief.

In Argentina, at the end of every day, the inspectors must submit to the divisional chief of inspection and supervision a written report mentioning the number of offences observed by them in the course of the day, the hour at which the offence was observed, the name of the person responsible for each offence, the address and description of the establishment concerned, the legal provisions infringed and, where appropriate, the number of workers and salaried employees affected by the infringement. A report must be submitted even when no offence has been observed. The reports are forwarded by the divisional chief to the President of the National Labour Department.

In Cuba inspectors must submit to the National Directorate of Labour Inspection a daily report stating the name of each factory, workshop or workplace they have visited, their observations on conditions of work and the enforcement of each labour law, and the contraventions observed or fines inflicted for observed contraventions. In the provinces, the inspectors must send their reports to the provincial chief inspector to whom they are responsible. He in turn sends the National Directorate of Labour Inspection a weekly report and a monthly statistical survey of the inspections carried out. Medical inspectors of health and social welfare have to send similar reports to the Director of Health and Social Welfare.

In New York the inspectors send daily reports on their work to the principal inspector. Forms are used for this

purpose indicating the nature of each inspection, the class of establishment visited, the number of employees found there, the hour at which the inspector entered the establishment, and the hour at which he left.

In other countries, such as Great Britain, Ireland and Peru, inspectors are required to submit *weekly* reports on their activities to the central authority (In Ireland an inspector has also to report separately on each inspection carried out by him)

In Great Britain district inspectors send weekly reports on the work done in their districts to their superintending inspectors, who in turn report to the Chief Inspector. They often submit special reports on particular points of difficulty as well. By means of these regular and special reports and also of periodical conferences with the superintending inspectors, the Chief Inspector is able to keep in constant touch with the work of inspection throughout the country.

In Peru inspectors likewise have to send weekly reports to their chief. The Inspector-General of Labour must in turn send a monthly report to the Labour Directorate.

In most countries labour inspectors send *monthly* reports to the higher authorities.

In Yugoslavia inspectors must, not later than the 5th of each month, submit to the Central Labour Inspectorate a monthly report on their activities during the past month, and at the end of February every year, an annual report.

In Norway inspectors send monthly reports on their work to the Chief Inspector. Mining inspectors and women inspectors, on the other hand, send in quarterly reports, while the boiler inspector, the special inspector of explosive and combustible materials, and the local inspection committees submit annual reports. In Latvia labour inspectors must send a monthly report on their work to the director of the Department. In Lithuania labour inspectors send the Chief Inspector of Labour and Social Assistance monthly reports on their work with statistical data concerning industrial undertakings. In Rumania the regional inspectorates draw up monthly statistical reports, containing information in regard to contraventions, the conclusion of collective agreements, collective labour disputes, the state of unemployment, and the activities of public employment exchanges. They also report weekly on the state of collective labour disputes and on the dismissal

and recruitment of workers and salaried employees. In the U S S R labour inspectors and technical and sanitary inspectors report monthly to the competent authority in the Labour Commissariat. Inspectors of young persons' employment have to send quarterly reports on their work to the Central Committee of the Union of Young Communists and to the Central Committee of Trade Unions. In Sweden labour inspectors have to report monthly to the State Insurance Institution the number of undertakings visited during the month in each occupational category. The special inspectors send in similar reports quarterly. Once a year, the labour and special inspectors submit a general report on their work to the State Insurance Institution. This report contains statistics of the work done during the year and mainly summarises the information submitted in the monthly or quarterly reports. In France the labour inspectors give a monthly account of their activities to the divisional inspector in the form of reports on inspections. Further, they send their chief a circumstantial yearly report on the enforcement in their territory of the provisions they are responsible for supervising. This report contains statistical tables. In turn the divisional inspectors send the central administration a report on the enforcement in their area of the laws with which the labour inspectorate is concerned.

In Czecho-Slovakia, Japan and Estonia labour inspectors must submit, at least once a year and usually at the beginning of the year, a detailed report on their work to the central authority.

In Venezuela labour inspectors have to give a monthly account of their work to the National Labour Office, giving prescribed information. They must also supply a general annual report every January.

It should be added that in most countries the inspectors must draw up their reports according to a prescribed plan, that is, they must use forms placed at their disposal for the purpose by the administration. This considerably simplifies the administrative work of the inspectors and facilitates supervision by the higher authorities.

## § 2. — Annual Reports on Labour Inspection

The annual reports contain a survey of the inspectorate's supervisory activities throughout the country. Stress has already been laid in the introductory paragraphs on the significance of annual reports as a means of supervising the enforcement of labour laws and regulations and as a source of national and international information concerning changes in labour legislation and of technical information concerning, for instance, health and safety. Most States are in fact aware of the part played by annual reports on inspection and see to it that they are published and distributed.

The national regulations requiring the publication of annual reports will be considered first, followed by a brief reference to the content of reports.

### PROVISIONS REQUIRING PUBLICATION OF ANNUAL REPORTS

A provision to the effect that annual reports shall be published is to be found in the laws and regulations of most countries, e.g. Argentina, Australia, Belgium, Canada, China, Czecho-Slovakia, Egypt, Estonia, Finland, France, Great Britain, Hungary, India, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Poland, Rumania, Sweden, Switzerland, the United States (New York State) and Yugoslavia. Details as to the conditions under which annual reports are to be drawn up and published are given below for each of these countries.

In Argentina the Director of the National Department of Labour has to submit an annual report on the work of the inspection service for which he is responsible. This report, which was originally published in the Bulletin of the Department, at present forms part of the annual report submitted to Congress by the Minister of the Interior. Further, the *Boletín Informativo* (fortnightly information bulletin) of the National Department of Labour publishes monthly statistics of the contraventions observed and prosecutions instituted by the inspection division. The National Department of Labour also publishes a monthly summary of inspection activities which is communicated to the daily and periodical press and is reproduced by a great many papers.

In the Australian States the annual reports of the Chief Inspectors of Factories are submitted to Parliament and published as an official document

In Canada the Provincial Departments of Labour submit a published annual report on factory inspection to the Lieutenant-Governor in Council

In China the important passages of all reports on factory inspection are published in *The Chinese Factory Inspection Year-Book*, which is published by the Factory Inspectorate at headquarters. So far two volumes of the *Year-Book* have been published, for 1934 and 1936.

In Czecho-Slovakia the Central Labour Inspectorate prepares, on the basis of the reports sent in by the various inspection offices, a general report which is published in book form by the Ministry of Social Welfare, and usually includes illustrations relating to industrial safety and health

In Denmark the Labour Council submits an annual report on its work to the Minister of Social Affairs, a similar report is drawn up by the Director of the Labour and Factory Inspection Office. The annual reports appear in book form, summaries being published in French<sup>1</sup> They are then submitted to the Rigsdag

In Egypt the annual report of the Director of the Labour Department covers all the activities of that Department, including labour inspection. The report is published in book form in Arabic, French and English<sup>2</sup>.

In Estonia the Division of Labour and Social Insurance publishes an annual volume containing a general survey of the information supplied by the inspectors

In Finland quarterly and annual reports are published in the review of the Ministry of Social Affairs

In Great Britain the Chief Inspector of Factories draws up an annual report on the factory inspectors' activities which is laid before Parliament and published in book form about the beginning of July The report contains about one hundred pages A summary is regularly published in the *Ministry of Labour Gazette*, summaries and extracts being widely reproduced in the press

In Hungary the Labour Inspection Section of the Ministry

<sup>1</sup> The last issue (1937) contained a report of 162 pages, with a 6 page summary in French

<sup>2</sup> So far only one report has been published, for 1935

of Labour draws up, on the basis of the reports sent in by district inspectorates, a general survey of the labour inspectors' activities, which is published in book form. The report also contains statistical tables with explanatory notes in English, French, German and Italian. As a general rule the reports are published yearly, though a single report may cover a longer period than one year. For instance, the last report was for the two years 1935-1936. For some time past it has also been the practice to publish offprints from the report, in particular the chapters dealing with accidents and safety devices; these offprints are distributed among the workers.

In India the Provincial Governments publish annual reports on labour inspection within their respective territories. Once a year the Government of India publishes a survey of the statistics compiled by Provincial Governments, with a note on the enforcement of labour laws and regulations during the past year. The reports of Provincial Governments and that of the Government of India are published as official documents.

In Ireland the annual report for each calendar year is published about the middle of the following year. A summary is published in the monthly *Irish Trade Journal*.

In Japan an annual report is published on labour inspection. The 1935 issue contains 875 pages including appendices. A summary of the report appears in *Rodo Jiho*, the monthly publication of the Labour Office of the Department of Welfare.

In the Netherlands a survey of the labour inspectorate's activities is published yearly.

In New Zealand the Minister of Labour lays an annual report on factory inspection before Parliament. The report is published as an official document.

In Norway the Chief Inspector publishes the inspection reports in an annual publication issued by the Council of Labour and Inspection.

In Poland the Inspector-General of Labour submits annual reports on the work of the labour inspectorate to the Minister of Social Assistance. These annual reports are based on the periodical reports which the Inspector-General receives from his subordinates. They are published in book form, and there is a somewhat shorter edition in French<sup>1</sup>.

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<sup>1</sup> The French edition for 1935 contained 70 pages plus statistical tables

## LABOUR INSPECTION REPORTS

In Rumania the Directorate-General of Labour publishes the annual reports of regional inspectorates, sometimes as an independent volume and sometimes, for reasons of economy, in the *Buletinul Muncii* (Bulletin of Labour), which is the official publication of the Ministry of Labour, Health and Social Welfare. The Directorate-General also reports in the Bulletin on the work of the inspection service for periods of three months, six months, nine months or one year.

In Sweden the annual reports of the labour and special inspectors are combined and used as material for a yearly publication entitled *Yrkesinspektionens verksamhet* (Activities of the Labour Inspectorate).

In Switzerland the Department of National Economy publishes once a year the reports of the four Federal inspectorates and once every two years, in the form of summaries appended to the Federal inspectors' reports, those of the Governments of the cantons and of the Principality of Liechtenstein. The Federal inspectors' reports are published in one volume, containing a brief introduction followed by the four reports for the different areas. Extracts and summaries are published in a large number of newspapers and periodicals.

In the Union of South Africa the annual report of the Department of Labour is published as an official document and contains, in the part dealing with the enforcement of labour laws and regulations, a survey of labour inspection.

In the United States the Department of Labor of New York State, for instance, publishes an annual report of about 200 pages which includes a survey of the inspection division's activities.

In Venezuela the National Labour Office publishes an annual report on the activities of all the labour inspection services in the Republic during the past year.

In Yugoslavia the Chief Inspector of Labour must submit to the Minister of Labour and to all the other authorities, offices and institutions concerned, an annual report on the work of the labour inspectorate. This report, which is followed by the annual reports of the regional labour inspectors, is published yearly in book form by the Minister of Social Policy and Public Health.

In some countries the annual reports consist for the time being of statistical tables only. This applies to Belgium, Italy and France.

In Belgium the labour administration used to publish up till 1930 a very full report. Since then it has been necessary, for financial reasons, gradually to reduce the size of the report, and at present only statistical tables are published. As soon as the economic situation improves, the reports will again be published in full.

In Italy section 28 of the Legislative Decree of 27 April 1913 provides that reports on the work of the various inspectorates shall be submitted to the competent Minister not later than the month of February every year. The reports are to be collected in one volume and introduced by a general report on labour inspection drawn up by the Director-General of Labour. In practice, reports are no longer published in that form. The inspectorate now publishes yearly tables recording the inspectors' findings, with a view to establishing how far labour laws and regulations are being enforced. The last table of this kind was published in the official review of the Ministry of Corporations, *Sindacato e Corporazione*, February 1937.

In France, under section 110 of Book II of the Labour Code, the Ministry of Labour must publish once a year a general report summarising the observations communicated by inspectors. Up till 1914 the divisional inspectors sent the central administration a report on the enforcement in their area of labour laws. On the basis of these reports, the central administration drew up a general report, which was submitted to the President of the Republic and published in the *Journal Officiel*. Since then the divisional inspectors have continued to send the Ministry annual reports, but the central administration has merely published statistics compiled from these reports in the Bulletin of the Ministry of Labour and in the Bulletin of Labour Inspection. At present the Minister of Labour only reports once a year on the enforcement of the Act concerning occupational diseases. The report is published in full in the above-mentioned Bulletins, offprints being also available.

#### CONTENTS OF ANNUAL REPORTS

What follows is not, of course, a detailed study of the contents of annual reports on labour inspection, which in many countries are lengthy documents, sometimes containing several hundred pages. The only question to be raised here is



one which had already been considered by the International Labour Conference in 1923. How far can the contents of annual reports be made sufficiently uniform to permit of comparison ?

It would be to the advantage of all countries if there were some uniformity, both of substance and of form, in the reports. Here a difficulty arises which has frequently been mentioned in the course of this Report - the difference in the standards of national labour laws and regulations. The annual reports of the various countries can only be based on the provisions of national laws, and it is common knowledge that, owing to the great diversity of these laws and also of the national circumstances in which they are enforced, any attempt to establish a standard form of report for all countries would be doomed to failure.

Yet in the absence of complete uniformity, which would hardly be desirable, some degree of uniformity might still be secured, if only on very broad lines. Some problems are common to all inspection services, just as some tasks are common to all forms of supervision, whatever differences there may be in national regulations.

If the annual reports are considered from this point of view, a fairly considerable degree of uniformity will be observed, at any rate as regards the broad divisions, in the manner of reporting on the supervisory activities of inspectors. A few examples of the subjects dealt with are given below.

In Argentina the reports of the National Department of Labour contain very brief details about the activities of the various services in the Department, information bearing chiefly on the number of inspections carried out, the contraventions observed, the time-tables and workers' discharge books registered and approved, contraventions reported by third parties, prosecutions instituted, and industrial accidents recorded by the Inspection Division.

In Estonia the subject-matter of the annual reports is exactly the same as that described in Paragraphs 22 and 23 of the Labour Inspection Recommendation, 1923 (No. 20).

In Germany the Labour Inspectorate's reports are drawn up according to a plan providing for the following chapters :

An Introduction, containing information about the organisation of inspection services and the composition of the staff ;

Chapter I, dealing with general conditions of employment :  
(a) wages in general ; (b) workers ; (c) salaried employees ;

Chapter II, dealing with the protection of life and health :  
(a) occupational accidents ; (b) diseases ; (c) workplaces and factory equipment ;

Chapter III, dealing with other social measures, such as the housing of workers in temporary employment, factory nurses, etc.

In Great Britain the annual reports contain, in addition to an introduction embodying the Chief Inspector's comments on the inspectorate's work during the past year, a general report on industrial developments, staff movements, special activities, administrative developments, publications, etc., and a series of chapters dealing with safety, accidents to young workers, health, hours of employment, welfare, piece work, truck, and the Home Office Industrial Museum. The report also contains statistical tables concerning accidents, etc, contravention notices issued to occupiers, notices to district councils, and information concerning medical examinations, prosecutions, and cases of poisoning, the annual reports of medical officers of health, and a survey of the administration of Factory Acts during the past ten years.

In Hungary the annual report contains information on the following points : (a) general work of the service, (b) the licensing of undertakings ; (c) the protection of workers ; (d) the supervision of boilers and State undertakings.

In Ireland the annual report contains a report on inspections, prosecutions, accidents and certifying surgeons, with tables showing (by counties) the number of premises on the register and the number visited, the number of medical examinations of young persons, the number, distribution by industry, age, sex, and causation of accidents, and a list of Acts enforced.

In Poland the reports contain a descriptive part and statistical tables. Since 1938 the descriptive part has been drawn up on new lines, a detailed list of the points to be covered having been established as follows : (1) Situation of the staff with reference to the work to be done — methods of work ; (2) state of employment ; (3) inspection work ; (4) industrial safety ; (5) industrial health ; (6) enforcement of labour laws and regulations ; (7) economic situation of workers

(workers and salaried employees) — workers' earnings — arbitration; (8) protection of agricultural workers and janitors; (9) trade unions and employers' associations; (10) protection of women and young persons. New forms have been prepared with a view to the adjustment of tables to the statistical reports.

In Rumania the annual report contains a general survey based on the information supplied by inspectors. It must also contain a list of the laws and regulations concerning conditions of employment which have been promulgated or approved and put into operation during the year under review. The annual report should also contain tables supplying the necessary statistical information with regard to the organisation and work of the inspection service and the results it has achieved.

In Switzerland the reports of the Federal inspectors are published in one volume, containing a short introduction followed by the separate reports for each of the four areas. Each of the four reports consists of the following chapters: I. general (the Federal inspector's views on the development of the industrial and economic situation in his area, and, in tabular form, the number of factories and of the workers they employ and the number of inspections carried out and of special enquiries); II. industrial health and accident prevention — approval of new equipment, III. factory rules, contracts of employment (wages, fines, holidays); IV. hours of work; V. employment of women and young persons; VI. welfare measures taken by employers (housing, canteens, insurance funds, holiday arrangements); VII. enforcement of the Act by the cantons (comments on enforcement, relations with cantonal municipal authorities, decisions given by the courts, etc.); industrial health exhibitions (installation, management, new acquisitions, visitors). The appendices regularly contain tables showing the number of factories and of their workers (classified by cantons and by groups of industries), the number of temporary permits issued by cantonal authorities for overtime, night work and Sunday work; the details of such permits, the permits granted by Federal authorities with regard to hours of work, etc.; the fines inflicted for breach of the Federal provisions concerning work in factories. The reports of the cantonal Governments are briefly summarised on the lines laid down for Chapters I-VI

of the Federal inspectors' reports Chapter VII of the cantonal reports deals with the enforcement of regulations by the cantonal authorities and with penalties.

In Yugoslavia the general part of the annual reports for 1935 contains chapters dealing with the following points: I Acts, orders and regulations; II activities and official journeys of inspectors, III. protection of workers against accidents; IV sanitary conditions at workplaces; V state of employment; VI. economic situation of the workers; VII labour law.

Apart from the descriptive statements dealing with the points mentioned above, the report prepared by the competent branch of the Ministry contains statistical tables supplying information with regard to .

The general activities of the labour inspectorate; committees appointed to consider applications for the opening of new or the enlargement of existing undertakings; breaches of the Workers' Protection Act and of the Labour Inspection Act — penalties inflicted; the number of undertakings inspected; the defects observed in undertakings; industrial accidents, fatal accidents classified according to the nature of the work, the number of undertakings inspected, classified according to the number of workers employed; workers' earnings and cost of living; labour turnover statistics; the number and nature of strikes; classification of strikes according to the workers' claims.

It appears from this description that, however varied the subject-matter of annual reports may be, they nearly always contain substantial information on the following points: (1) The strength and organisation of the staff of the inspectorate, (2) the powers of the inspectorate, (3) the scope of inspection as to occupations, (4) the standard of inspection (frequency of visits), (5) the number of prosecutions instituted for breach of regulations, and the number of accidents.

These points had, moreover, already been considered by the Conference in 1923 and dealt with in the Labour Inspection Recommendation, whose relevant provisions are the following :

22 That the annual general report should contain a list of the laws and regulations relating to conditions of work made during the year which it covers

" 23. That this annual report should also give the statistical tables necessary in order to provide all information on the organisation and work of the inspectorate and on the results obtained. The information supplied should as far as possible state

- " (a) The strength and organisation of the staff of the inspectorate ,
- " (b) The number of establishments covered by the laws and regulations, classified by industries and indicating the number of workers employed (men, women, young persons, children) ,
- " (c) The number of visits of inspection made for each class of establishment with an indication of the number of workers employed in the establishments inspected (the number of workers being taken to be the number employed at the time of the first visit of the year), and the number of establishments inspected more than once during the year ,
- " (d) The number of and nature of breaches of the laws and regulations brought before the competent authorities and the number and nature of the convictions by the competent authority ,
- " (e) The number, nature and the cause of accidents and occupational diseases notified, tabulated according to class of establishment "

As regards the contents of annual reports, two suggestions made by the 1923 Conference may be recalled here

The first was that States should be invited to include in their annual reports a special chapter on the enforcement of International Labour Conventions. That proposal was rejected on the grounds that under the Constitution of the International Labour Organisation States Members were already required to submit an annual report on the Conventions they had ratified, and that States could not be asked to report on the enforcement of Conventions they had not ratified.

The second suggestion made at the 1923 Conference was that inspection services should be asked to deal in their annual reports with a special health or safety subject, in addition to the ordinary subject-matter. The Governments responsible for this suggestion considered that the inspectors' annual reports would be much more valuable if they were to become a source of international information concerning the various questions which affect the protection and safety of workers.

The first attempt to apply this suggestion was made in a resolution which the Conference adopted in 1930. The

resolution provided that the Governments of the more important industrial countries were to agree year by year on one or two special questions affecting the protection of workers, with which labour inspectors would be required to deal in greater detail in their yearly reports.

In pursuance of that resolution, the Governing Body chose in 1931 the question of the organisation of safety services in industrial undertakings and in 1936 that of accident prevention in lumbering and the woodworking trades, for special treatment in annual reports on inspection.

Such in brief are some of the questions that arise as regards the standardisation of the contents of annual reports on labour inspection, and which the Conference will no doubt wish to consider.

## APPENDIX

### TABLE OF NATIONAL ENFORCEMENT SERVICES

The purpose of the appended table is to show what labour inspection services, or other enforcement services, at present exist in the various countries, their respective competence in respect of undertakings and subjects, and the manner in which responsibility is divided among the different national services. In order to give such a table its full significance, it has been thought desirable not to limit the scope to industrial and commercial undertakings (as has been done in the Report as a whole) but to include the other main branches of economic activity (mines, transport, agriculture). The following brief explanations may serve to facilitate reference to the table.

Column 4 *l* — heterogeneous activities — is intended to cover special cases where the competence of an inspection service is defined by subject-matter rather than by specific branches of economic activity. Thus, an inspectorate responsible for the enforcement of binding arbitration awards is usually competent only in respect of the undertakings or trades covered by those awards, and these will constitute a heterogeneous group, including sections of industry, commerce, agriculture, etc., but not conterminous with any of these main branches.

The absence, in the case of a number of countries, of any cross in column 4 *g* — rail transport — must not be taken as necessarily implying that railway work is not subject to any form of labour inspection. In railway work the safety of the workers is to a large extent bound up with the safety of the passengers, and the precautions taken to protect the passengers, while not involving "labour inspection" in the ordinary sense, nevertheless result in protecting the railway workers as well. Moreover, where the railways are nationalised, the government department concerned often assumes responsibility for enforcing the provisions of labour law without finding it necessary to create a special labour inspectorate.

Lastly, the limitations necessarily involved in any tabular form of representation must be borne in mind. A table cannot take account of fine shades or distinctions, it can only give a very general and approximate picture of the facts. Thus, the fact that a cross appears in any of the columns under the main column 4 (scope in respect of undertakings) must not be taken as implying that the inspectorate concerned is competent to inspect in all undertakings covered by the heading of that column. Similarly, a cross in one of the columns under the main column 5 (scope in respect of subjects) does not necessarily mean that the inspectorate has more than a partial and incidental competence in respect of that subject. Again, where for a particular inspectorate crosses appear in several columns

under the two main columns 4 and 5 respectively, it must not be assumed that that inspectorate is competent for all the subjects indicated by a cross in all the undertakings similarly indicated. Thus, supposing that crosses appear in the columns headed "factories and workshops" and "commerce" under 4, and in the columns headed "hours of work and rest" and "protection of wages" under 5, the position may be *either* that the inspectorate concerned is competent for both those subjects in both those classes of establishment, *or* that it is competent for both subjects in one class and for one only in the other, *or again*, that it is competent for one subject in one class and the other in the other. It would be impossible to indicate such variations without making the table altogether unwieldy, and the essential fact, that a single inspectorate is at the same time competent to inspect both classes of undertaking and to concern itself with both subjects, is in any case made clear.



**NATIONAL ENFORCEMENT SERVICES**

[illegible]



[illegible]

- Except for smelting and similar processes
- Exclusively smelting and similar processes
- In brick-kilns





## NATIONAL ENFORCEMENT SERVICES (cont.)

(1-2) Country — Ministry or Department	(3) Title of inspection service	(4) Scope in respect of undertakings										(5) Scope in respect of subjects						
		a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q
<b>Cuba (cont.)</b> Municipal authorities Local Administrative Committees of the Maternity Insurance Fund	Miscellaneous services	x	x															
	Inspection service of the fund																	
<b>CZECHO-SLOVAKIA</b> Ministry of Social Welfare Ministry of Public Works	Labour Inspectorate	x							x									
	Mines Inspectorate																	
<b>DENMARK</b> Ministry of Social Affairs Id Ministry of Navigation and Fishing Ministry of Public Works	Labour and Factory Inspectorate																	
	Municipal Inspectorate																	
<b>EGYPT</b> Ministry of Commerce and Industry Department of Labour	Navigation Inspectorate																	
	Railway Inspectorate																	
<b>EGYPT</b> Ministry of Commerce and Industry Department of Labour	Labour Inspectorate	x																
	Labour Inspectorate																	

\* With regard to quarries







[illegible]

Undertakings using machines and employing at least 20 workers

Surface quarries

**Mines and blast-furnaces**

## NATIONAL ENFORCEMENT SERVICES (cont.)

(1-2) Country Ministry or Department	(3) Title of inspection service	(4) Scope in respect of undertakings											(5) Scope in respect of subjects									
		a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	
		Factories, workshops, etc	Building construction	Engineering construction	Docks	Commerce	Shipping	Rail transport	Road transport	Mines and quarries	Agriculture	Heterogeneous activities	Hours of work and rest	Provisions con- cerning women	Provisions con- cerning juveniles	Health	Safety	Accommodation	Protection of wages	Rates of wages	Home work	
India (cont.) Department of La- bour	Mines Inspectorate									X			X	X	X	X	X					
IRAN Ministry of Industry and Mines	Inspection service																					
Ministry of High- ways and Communica- tions	Road Inspectorate		X							X			X	X		X	X		X	X		
General Adminis- tration of Railways	Railway Inspec- torate		X										X	X		X	X		X	X		
IRAQ Ministry of the Interior	Labour Section	X	X		X		X	X	X	X			X	X	X	X	X	X	X	X	X	
IRELAND Department of In- dustry and Commerce	Industrial inspectors	X			X								X	X	X	X	X		X	X	X	
Id	Inspectors of Mines and Quarries				X					X			X	X	X	X	X		X	X		
Id	Superintendents of Mercantile Marine Offi- ces & Marine Surveyors					X							X	X	X	X	X		X	X		

<sup>1</sup> Undertakings controlled by Government  
<sup>2</sup> Partially  
<sup>3</sup> Government undertakings

\* Undertakings controlled by Government  
 \* Partially  
 \* Government undertakings



## NATIONAL ENFORCEMENT SERVICES (cont.)

(1—2) Country — Ministry or Department	3.  Title of inspection service	(4) Scope in respect of undertakings												(5) Scope in respect of subjects										
		Factories workshops, etc.	Building construction	Engineering construction	Docks	Commerce	Shipping	Rail transport	Road transport	Mines and quarries	Agriculture	Heterogeneous activities	Hours of work and rest	Provisions (con- cerning women	Provisions (con- cerning juveniles	Health	Safety	Accommodation	Protection of wages	Rates of wages	Home work			
<b>Latvia (cont.)</b> Railway Adminis- tration	Miscellaneous ser- vices							x																
<b>LITHUANIA</b> Ministry of the Interior	Labour Inspectorate	x	x	x	x	x			x	x							x	x	x	x				
	Technical inspec- tors																							
<b>LUXEMBURG</b> Ministry of Labour and Social Welfare	Labour Inspectorate	x	x					x	x	x							x		x	x				
	Mines Inspectorate																x							
<b>MEXICO</b> Department of La- bour	Federal Labour Inspectorate	x	x	x			x	x	x	x							x	x	x	x	x	x		
	Executive Power of the Federal States					x											x	x	x	x	x	x		
	Industrial Health and Safety Office (De- partment of Labour)		x														x	x	x	x	x	x		

[illegible]

With regard to juveniles

With regard to juveniles

Right of enquiry with regard to collective agreements declared generally

For labour conditions in general with the exception of health and safety

The mines inspectors are responsible for labour protection in accordance with the Workers Protection Act, and in this capacity they are entrusted to the control authority of the Labour Inspectorate. In addition they carry out mining inspection duties coming under the Ministry of

annate to the central authority, and their salaries are included in that Ministry's budget

## NATIONAL ENFORCEMENT SERVICES (cont.)

(1-2) Country Ministry or Department	(3) Title of inspection service	(4) Scope in respect of undertakings											(5) Scope in respect of subjects								
		a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t
		Factories, workshops, etc.	Building construction	Engineering construction	Docks	Commerce	Shipping	Rail transport	Road transport	Mines and quarries	Agriculture	Heterogeneous activities	Hours of work and rest	Provisions con- cerning women	Provisions con- cerning juveniles	Health	Safety	Accommodation	Protection of wages	Rates of wages	Home work
<b>Peru (cont.)</b> Ministry of Public Health, Labour and Social Welfare (Social Welfare Directorate), Ministry of Develop- ment ( <i>Fomento</i> ) (Mines Directorate) Ministry of Finance (harbour authorities) Municipal authori- ties Ministry of Public Works National Social In- surance Fund	Section of inspectors	X	X									X	X	X	X	X	X	X	X	X	X
	Mining police																				
	Miscellaneous ser- vices																				
	Miscellaneous ser- vices	X											X	X	X	X	X	X	X	X	X
	State engineers																				
	Inspection depart- ment	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>POLAND</b> Ministry of Social Assistance Id Ministry of Agricul- ture	Labour Inspectorate	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	Institute of Social Insurance Instructors of the chambers of agricul- ture	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

<sup>1</sup> Only for public works

1 Only for public works



## NATIONAL ENFORCEMENT SERVICES (cont.)

(1—2) Country — Ministry or Department	(3) Title of inspection service	(4) Scope in respect of undertakings											(5) Scope in respect of subjects										
		a	b	c	d	e	f	g	h	i	j	k	l	a	b	c	d	e	f	g	h	i	
		Factories, etc.	Building construction	Engineering construction	Works	Commerce	Shipping	Rail transport	Road transport	Mines and quarries	Agriculture	Heterogeneous activities	Hours of work and rest	Provisions concerning women	Provisions concerning juveniles	Health	Safety	Accommodation	Protection of wages	Codes of wages	Home work		
SWEDEN Ministry of Social Affairs, National Insurance Institute  Ministry of Commerce (Industry and Navigation)  Ministry of Social Affairs	State and Communal Labour Inspectorates	x	x	/	/	x				x	/	/	x	x	x	x	x	x			x		
	Mines administration <sup>1</sup>									x			x	x	x	x	x						
	Miscellaneous services Prefectures, automobile inspection, collaboration with police						/		x				x	x	x	x	x						
SWITZERLAND <sup>1</sup> Federal Department of Economic Affairs Federal Office of Industry, Arts and Crafts, and Labour  National Accident Insurance Fund Federal Department of Postal Services and Railways	Federal Inspectorate	x											x	x	/	x	x		x		x		
	Insurance officials									x	x					x	x						
	Miscellaneous services	/	x										x	x	x	x	x		x				

<sup>1</sup> With regard to the safety of machines employed in agriculture and operated by mechanical, human or animal power in collaboration with the State Labour Inspectorate.

<sup>2</sup> In Switzerland responsibility for inspection is divided between the Confederation and the Cantons. Federal inspection is carried out only in factories covered by the Federal Factory Act. In other fields of industry, handicrafts and commerce inspection is the duty of the Cantons.

<sup>1</sup> With regard to the safety of machines employed in agriculture and operated by mechanical, human or animal power

<sup>2</sup> In Switzerland responsibility for inspection is divided between the Confederation and the Cantons. Federal inspection is carried out only in factories covered by the Federal Factory Act. In other fields of industry, handicrafts and commerce inspection is the duty of the Cantons





[illegible]

[illegible]

**4 (certain undertakings**



**PART II**

**BASES**

**FOR INTERNATIONAL REGULATION**

**OF LABOUR INSPECTION**

## CHAPTER I

### CONCLUSIONS SUBMITTED BY THE INTERNATIONAL LABOUR OFFICE TO THE PREPARATORY TECHNICAL CONFERENCE

#### § 1. — The Desirability of International Regulations and their Form

In the introductory chapter to the present Report it was shown that the Governing Body's decision to place the subject of labour inspection on the agenda of the International Labour Conference for a second time, seventeen years after the adoption of a comprehensive Recommendation on the same subject, proceeds from the opinion expressed in various authoritative quarters, and particularly by the Conference itself in adopting Mr Jurkiewicz's resolution in 1936, that the time is ripe for the adoption of a Draft Convention. The 1923 Recommendation was so carefully drafted (by a Session of the Conference devoted exclusively to consideration of the single subject of labour inspection), it covers so wide a field, and it has encountered such general approbation, that no purpose would appear to be served by placing the question afresh on the agenda of the Conference merely with a view to the adoption of a new or revised Recommendation. In any case, so far as the Office is aware, no desire for the adoption of a fresh Recommendation on labour inspection has been expressed in any quarter.

The studies that the Office has carried out appear — as the conclusions indicated below will show — to demonstrate that, in spite of certain difficulties inherent in the subject-matter, there are a number of points and principles sufficiently important, sufficiently definite and of sufficiently general acceptance and application to constitute the material for a Draft Convention which would impose tangible obligations on ratifying States, would offer favourable prospects of widespread ratification, and, if so ratified, would constitute a real guarantee of the uniformly strict enforcement of protective labour legislation over a large area of the civilised world.

The majority of these points and principles are already enunciated in the text of the Recommendation, but, in addition to these, the Office in the course of its preliminary studies has encountered a few points which, though omitted from the

Recommendation, appear to it to be sufficiently generally accepted and of sufficient practical importance to deserve consideration with a view to their incorporation in a Draft Convention. On the other hand, the Recommendation covers a certain number of points which, in view of the wide divergences in constitutional law and administrative practice between the different national systems, could hardly be formulated in terms suitable for inclusion in a binding international agreement. Consequently, if the Office's conclusions are approved, the task of the Conference would not be merely to transform the Recommendation into a Convention.

The question referred by the Governing Body to the consideration of the Preparatory Technical Conference covers, it will be remembered, inspection carried out in both *industrial* and *commercial* undertakings. Although certain risks to health and safety arise only in industrial processes, the essential principles for the organisation of inspection systems appear to be invariable, whether the inspection is applied to commerce or to industry. Moreover, in a large number of countries the inspection of industrial and commercial undertakings is carried out by the same national services. Consequently, it might appear to be ideally desirable to draft a single Draft Convention (with or without special clauses of limited application) covering the inspection of both classes of undertaking. Nevertheless the fact must be borne in mind that, in a number of countries — of which Great Britain is an outstanding example — inspection services for industry and commerce respectively are organised on very different lines, and that it would consequently be very difficult to draft a single Convention in such a way that the countries in question could ratify it without first introducing very important changes in their administrative systems. The Office therefore considers that the most satisfactory procedure would be to prepare two Draft Conventions, of substantially identical content, applicable respectively to the inspection of industrial and commercial undertakings.

Further, in the course of preparing the present Report the Office has noted certain points of some importance which would appear to be unsuitable for regulation by means of a Convention, but which might be taken into consideration with a view to the drafting of one or more new Recommendations. Feeling, as it does, that the existing Recommendation

is a remarkably satisfactory instrument in its present form, the Office would hesitate to suggest anything that might be regarded as a mere attempt to patch it up on points of detail. The object of the proposals that have resulted in the Governing Body's convening the Preparatory Technical Conference, and in placing the question of labour inspection on the Agenda of the 1940 Session of the International Labour Conference, was to secure the adoption of a Draft Convention, and a very noteworthy progress will have been realised if this result is satisfactorily attained. Nevertheless, there do appear — as the following pages of the Office's conclusions will show — to be a few points which are either not covered at all by the 1923 Recommendation, or which, in the light of subsequent developments, might appear to deserve fuller treatment at the present day. An instance of the former is the association of the inspectorate in the examination of plans for new plant or extensions of existing plant, and of the latter, the association of the employers and workers in enforcement activities. In the appropriate sections the Office has set out the arguments in favour of attempting to deal with these points by way of a Recommendation. As each of the points in question represents a single and distinct subject, it would no doubt be preferable to deal with each in a short separate Recommendation, rather than to attempt to group them together in what would inevitably be a disjointed and inharmonious text.

## § 2 — The Scope of the International Regulations

The scope of the question submitted for consideration to the Preparatory Technical Conference has been defined by the Governing Body in the following terms: "The general principles for the organisation of systems of inspection carried out in *industrial undertakings (excluding mining and transport undertakings) and commercial undertakings*". The Governing Body felt obliged to exclude mining and transport undertakings, and agriculture, because the inspection of these raises very special technical problems, and is, in the majority of countries, entrusted to special services or branches<sup>1</sup>. On the other hand, it considered that commercial undertakings should

<sup>1</sup> Cf. Appendix to Part I



be included, because the inspection of such undertakings does not present special technical difficulties, and is in a number of countries grouped for administrative purposes with the inspection of industrial undertakings (factories)<sup>1</sup>, and also because of the demand among commercial employees themselves that the subject for discussion should not be restricted to factory or industrial inspection in the narrow sense

The question must now be considered, whether such a scope is to be regarded as a minimum or a maximum whether, that is to say, regulations covering the inspection of industrial and commercial undertakings are to be drafted in such a way as to oblige ratifying States to apply the principles to be laid down to *all* such undertakings, or whether they are to be so drafted as to leave the States free to limit the competence of their inspection services in accordance with the scope of their existing protective labour legislation

In a Convention concerning direct protective provisions it is clearly necessary to regard the scope fixed as a minimum, in order to ensure that there is no inequality in the obligations assumed by the ratifying States (though even here it has often been found necessary to leave certain questions of interpretation to the discretion of the national authorities — for instance, the drawing of a line of demarcation between industry and agriculture, in such a way as to include the processing of agricultural products on one side of the line or the other)

But labour inspection is not, in itself, a direct protective provision, it is a method of enforcing such provisions, and its scope must necessarily depend in each country on the scope of the provisions for whose enforcement it has been instituted. The International Labour Conference is not called upon to decide that “a system of labour inspection shall be applied to all industrial and commercial undertakings, defined in such-and-such a way”, but that “systems of labour inspection for the enforcement of existing legislation for the protection of persons employed in industrial and commercial undertakings shall be organised on such-and-such lines”

The most cursory examination of the protective labour legislation of the different countries shows that the scope of such legislation — even of such universally adopted pro-

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<sup>1</sup> Cf Appendix to Part I

visions as those protecting women and juveniles — varies considerably. Thus, there are States where the relevant protective legislation, and consequently the competence of the inspection service, does not apply to public undertakings, or to undertakings employing less than a minimum number of persons, or to undertakings where power-driven machinery is not employed, or to *all* branches of industrial undertakings, or to certain kinds of “public works” (construction of railways or of telegraphic or telephonic installations, etc.)

Accordingly, if the proposed regulations were to be worded in such a way as to imply that the terms “industrial undertakings” and “commercial undertakings” represent a *minimum* scope, then many countries whose inspection services are already organised in accordance with the principles to be laid down, or which might be prepared to modify the organisation of their inspection services in accordance with those principles, would nevertheless be unable to ratify the Convention or Conventions unless they were at the same time prepared to extend the scope of their protective labour legislation. As they would, in most cases, not be prepared to go to such a length, the regulations would largely fail to attain their object.

The Office therefore concludes that the scope of the proposed international regulations concerning “the general principles for the organisation of systems of inspection carried out in industrial undertakings (excluding mining and transport undertakings) and commercial undertakings” should be, for each country, that laid down in the legal provisions which its inspectorate has to enforce, or, in other words, that each competent national authority should be left free to determine the scope of its labour inspection services’ activities in accordance with the scope of the existing legislation enforceable by them.

### § 3 — The Object of Labour Inspection

#### THE GENERAL OBJECT OF LABOUR INSPECTION

The subjects covered by the national laws and regulations which labour inspectors of one kind or another have to enforce, and the duties incumbent on the inspectors both in virtue of such laws and regulations and also *de facto*, vary con-

siderably from country to country. If all of these subjects and duties were to be taken into account in drafting international regulations, it would be extremely difficult to lay down any generally valid rules and principles for the organisation of inspection systems. An attempt must therefore be made to define a nucleus which is common to the great majority of countries.

This problem had to be faced by the Office when it was preparing for the discussion of "general principles for the organisation of factory inspection" by the 1923 Session of the International Labour Conference. In the Blue Report submitted to the Conference in that year, the Office pointed out that "as was indicated in the Questionnaire, there are a number of provisions the supervision of which constitutes the normal work of inspection in all countries and the determination of which cannot give rise to any controversy. These are the provisions of the laws or regulations which aim at protecting the workers while carrying on their work, i.e. provisions concerning the regulation of work, (hours of work and rest, night work, prohibition of the employment of certain persons on dangerous, unhealthy or physically unsuitable work) and provisions relating to the hygiene and safety of the workers. The replies of the Governments confirm the suggestions made in the Questionnaire in this connection and, on the whole, are very homogeneous in character. All the Governments without exception include these provisions among those which it is the primary work of inspection to supervise. The conclusion may be drawn from the replies that, on the whole, the Governments would appear to be in favour of restricting the work of inspectors to the supervision of provisions for the protection of the worker at his work."

In the Draft Recommendation which the Office submitted to the Conference as a basis for discussion it did include one further item among the laws and regulations which it should be the principal duty of each national inspectorate to enforce, viz "legal provisions concerning the fulfilment of the terms of engagement of workers which involve penalties", but the Committee set up by the Conference to discuss the "sphere of inspection" decided by a large majority to delete this phrase, mainly on account of its obscurity. Accordingly, paragraph 1 of the Recommendation as adopted by the

Conference defines the principal function of labour inspection systems as being "to secure the enforcement of the laws and regulations relating to the conditions of work and the protection of the workers while engaged in their work (hours of work and rest, night work, prohibition of the employment of certain persons on dangerous, unhealthy or physically unsuitable work, health and safety, etc.)" — these being the laws and regulations the enforcement of which can only be supervised, generally speaking, by means of an actual visit of inspection carried out at the workplace. In a number of countries the inspectors no doubt carry out other important duties in the spheres of conciliation and administration, but their actual visits of inspection are, it would seem, primarily if not exclusively concerned with the enforcement of binding provisions relating to "the conditions of work and the protection of the workers while engaged in their work."

For the reasons indicated in the opening paragraph of this section, the Governing Body has thought it advisable, in order to define the subject-matter of labour inspection for the purposes of the Preparatory Technical Conference's discussions, to borrow the terminology already employed in the 1923 Recommendation, thus limiting that subject-matter to "the enforcement of legal provisions relating to conditions of work and the protection of the workers while engaged in their work." This phrase has stood the test of full discussion at a Session of the International Labour Conference exclusively devoted to the subject of labour inspection. Its meaning is moreover made still clearer by the illustrative list of subjects appended to it in the Recommendation. (The use of the term "legal provisions" rather than "laws and regulations" takes account of the fact that, in an increasing number of countries, legally binding arbitration awards or collective agreements form the juridical basis for the inspector's competence in various spheres.)

The Office accordingly considers that, in the light of the consultation of Governments which took place in preparation for the 1923 Session of the Conference, and of the discussions which took place at the Session, it would be desirable to specify that "labour inspection" for the purposes of any international regulations that may now be adopted is inspection for the purpose of securing the enforcement of legal provisions dealing with the subjects mentioned in paragraph 1

of the 1923 Recommendation " conditions of work and the protection of the workers while engaged in their work "

#### COMPETENCE OF LABOUR INSPECTION SERVICES IN RESPECT OF VARIOUS SUBJECTS

As has already been pointed out, the general term ' conditions of work and the protection of the workers while engaged in their work ' is accompanied in the text of the 1923 Recommendation by a list of subjects intended to illustrate its meaning " hours of work and rest , night work , prohibition of the employment of certain persons on dangerous, unhealthy or physically unsuitable work , health and safety, etc " The Office considers that it might be useful, for the sake of clarity, to insert a similar purely illustrative list in the text of the proposed Draft Convention or Conventions. The inclusion of such a list should not, of course, be understood as determining or limiting the competence of the national inspection services in respect of particular subjects, or as implying that States would be required to legislate in respect of all those subjects before they could ratify. On the other hand, it would imply that any labour inspection service whose primary object was to enforce legislation on one of the subjects mentioned would be governed by the provisions of the Convention.

The list as it stands may be considered as fairly comprehensive. It does, however, leave in doubt the important question of whether payment of wages is covered. It seems desirable that there should be a clear understanding whether this subject should be considered as included or excluded from the scope of the impending discussions and decisions.

From the standpoint of labour legislation the subject is of a twofold nature. It involves, in the first place, the protection of wages in the sense of the prohibition of " truck ", the regulation or prohibition of fines and deductions, the prohibition of payment in public-houses, etc , and, secondly, stipulations as to the rates of wages payable. These may be, and usually are, regarded as two distinct subjects, and whereas the enforcement of provisions for the protection of wages is almost invariably entrusted to the regular labour or factory inspectorate, the enforcement of provisions respecting rates of wages is frequently incumbent upon a special inspectorate,

or may even depend solely upon the winning of a civil action before a court of law

Thus, the inclusion in the illustrative list of subjects of "the protection of wages", in the sense defined above, would appear to be logical and desirable, and is recommended by the Office. It is less easy to reach a definite conclusion in respect of the payment of legally prescribed rates of wages.

On the one hand, it may be argued that wages are primarily a matter of contractual obligation as between the worker and his employer, and that the former disposes of remedies at civil law against the latter in case of failure to pay the legally prescribed rate, that the subject is one which differs essentially from those with which labour inspectors normally have to deal, that, where inspection for the enforcement of legal provisions respecting wage rates exists, it is in the nature of "complaint" inspection rather than "routine" inspection, that such inspection involves a high proportion of home-work inspection, that the thorough inspection of an establishment working on a piece-work basis, involving complicated calculations and auditing operations, as well as the interrogation of a large number of individual workers, is such a lengthy process that it cannot be undertaken with the same standard of frequency as in the case of ordinary labour inspection, and that in fact wage inspection is often entrusted to separate and specialised inspectorates.

On the other hand, it may be urged that, where wage rates are prescribed by law or by legally binding awards or agreements, failure to pay those rates gives rise normally to criminal as well as to civil proceedings, so that enforcement by inspection is both logical and necessary, that the subject is no more a special one than many others with which labour inspectors have to deal, that it would be quite possible, in a Draft Convention, to insert special provisions with regard to the special qualifications to be required in the case of wage inspectors and with regard to the standard of frequency of wage inspections, that in many countries wage inspections are in fact carried out by the ordinary factory or labour inspectors, that to combine this duty with the ordinary labour inspector's other duties represents an administrative simplification and reduces the disturbance caused to employers by the multiplication of inspection authorities, and that, in view of the social importance of the adequate enforcement

of wage legislation, the opportunity of securing an international guarantee of uniform strictness and efficiency in enforcement should not be neglected

The Office, after weighing these arguments against each other, finds those in favour of specifically including the payment of legally prescribed rates of wages among the subjects which may be regarded as lying normally within the sphere of an inspection service's activities, and, therefore, to be taken into account for the purpose of defining the subject-matter of labour inspection, the more convincing. If, however, the feeling of the Preparatory Technical Conference proves to be hostile to such inclusion, then it would seem advisable to specify that the international regulations are not intended to lay down guiding principles for the organisation of inspection systems in respect of this particular subject

#### § 4. — Organisation of Inspection Services

The administrative and territorial organisation adopted by different countries for their inspection services is based on the constant desire to ensure the greatest possible efficacy in the work of inspection. Generally speaking, the method selected is that of centralisation, the inspection service being placed under the supervision of a central body responsible for guiding and co-ordinating the work of the executive bodies which carry out the actual task of inspection. Within this framework the various States have regulated the details of the organisation of their services in accordance with their own special conditions and requirements. Notwithstanding the great diversity of these details, it is possible to discover certain general principles, which are set forth below for the consideration of the Conference

#### ADMINISTRATIVE ORGANISATION OF INSPECTION SERVICES

##### *Government Authorities to which Inspection Services are attached*

The great majority of countries now have inspection services each of which is attached to a central public authority towards which the administrative and executive branches of the service are responsible for all their activities. Except

in certain English-speaking countries and a few other countries which have adopted a system of multiple services, the supreme authority is the Government department dealing with labour matters

The principle of the centralisation of each inspection service under the direction of a central public authority is therefore accepted and practised in most countries. The importance of such a system of organisation was recognised in the Labour Inspection Recommendation, 1923 (No. 20), paragraph 10 of which provided "That the inspectorate should be placed under the direct and exclusive control of a State authority and should not be under the control of or in any way responsible to any local authority in connection with the execution of any of their duties."

It therefore seems desirable to include this rule in a Draft Convention on labour inspection in the form of a provision to the effect that each inspection service should be under the direct and sole control of a central authority to which the inspectorate is attached

#### *Organisation of Services*

##### *Central Services*

It was pointed out above that most inspection services were directly attached to a Government department. Experience shows that the authority of this supreme body, especially in countries with extensive territory, can best be exercised through a central body directly subordinate to the supreme authority and consisting of persons having the necessary ability and knowledge to secure uniformity in the work of the executive agents responsible for the actual task of inspection. Such central services exist in a large number of countries, either in pursuance of legislative provisions or as a result of the gradual development of the public administrative services.

Paragraph 9 of the 1923 Recommendation referred to the problem in the following terms "In countries which for the purposes of inspection are divided into districts, in order to secure uniformity in the application of the law as between district and district and to promote a high standard of efficiency of inspection, the inspectors in the districts *should* be placed under the general supervision of an inspector of



high qualifications and experience. Where the importance of the industries of the country is such as to require the appointment of more than one supervising inspector, the supervising inspectors should meet from time to time to confer on questions arising in the divisions under their control in connection with the application of the law and the improvement of industrial conditions."

By using the term "should" the Recommendation clearly indicates that it is merely addressing to Governments its opinion as to what is considered desirable and is not making any definite pronouncement on a question of national administration.

It is presumably unnecessary to go any further than the 1923 Recommendation. What is important from the point of view of the international regulations is to prescribe that the work of the inspection services should be directed and co-ordinated by a supreme authority which guarantees uniformity in inspection at every stage. This requirement can be met by including in the draft text of the Convention a provision making it compulsory for countries to place each of their inspection services under the control of the central authority to which they are attached.

#### *Executive Bodies*

The experience gained during the last century by certain countries which entrusted part of the work of inspection to local bodies, police services, etc., would seem to prove that inspection cannot be carried out in a completely satisfactory manner without the establishment of a separate body of officials engaging solely in this work. Here again the almost universal trend towards centralisation has led the great majority of countries to set up inspection services which, although varying greatly in the details of their structure, are similar in the main principles of their organisation. The executive bodies, which are under the direct supervision of the national central authority or a central service, consist of one or more chief inspectors, responsible for the work of the other inspectors and agents who act under their orders. When a country is divided into inspection districts, each district is usually under the supervision of a district inspector, who may have one or more inspectors under him. In a very few countries the inspection of certain small industrial establishments, shops,

workshops, etc., is entrusted to municipal bodies acting under the instructions and supervision of the central inspectorate. In certain English-speaking countries this system is also adopted for the inspection of shops and the supervision of the employment of children on certain tasks.

With regard to the desirability of including in the international regulations a provision concerning the organisation of the executive services, it would seem that the reasons advanced against any such provision concerning the central services hold good, as uniformity is guaranteed by a national central authority, the regulation of the details of the administrative organisation is an internal matter for the States concerned.

The 1923 Recommendation mentioned only one aspect of the organisation of the executive services, when it stated in paragraph 8: "That, in order that the inspectors may be as closely as possible in touch with the establishments which they inspect and with the employers and workers, and in order that as much as possible of the inspectors' time may be devoted to the actual visiting of establishments, they *should* be localised, *when the circumstances of the country permit*, in the industrial districts."

Here again the text merely makes a recommendation on a point which, as far as the Office is aware, is not dealt with in any national legislation — with a single exception — but is regulated by custom or by internal administrative measures. It does not therefore seem desirable to go any further than the 1923 Recommendation, more particularly as no such provision could be imposed as an absolute rule, for it would not take account of the special conditions of different countries.

*ation of Certain Sections of the Inspection Services and Employment of Experts not belonging to the Inspectorate*

The tasks of the labour inspectorate include the supervision not only of the enforcement of provisions concerning hours of work, rest periods, night work, the employment of women and children, etc., but also of conditions of hygiene and safety in workplaces. The growth of industry using machinery and the constant improvement in mechanical, chemical and other processes have made the problems of

hygiene and security with which the inspectorate has to deal increasingly technical, scientific and difficult. The method, adopted by certain countries from the outset, of having recourse to technical and other experts to deal with those problems, has gradually spread to most other countries. In some cases technical sections consisting of specialists such as doctors, engineers, chemists or electricians, have been set up within the central services. In other countries there are special sections dealing with explosives, boilers, etc. Elsewhere specialists are included on the staff of the various district inspection services. Sometimes, again, the inspectorate secures the collaboration of specialists who do not belong to the inspection service.

There are a very few exceptions to this rule, but even in the countries which have not so far secured the help of specialists and experts in their inspection services, there is practically no doubt cast on the desirability of such a step in principle.

The Recommendation of 1923 was quite definite on the subject. Paragraph 11 reads "In view of the difficult scientific and technical questions which arise under the conditions of modern industry in connection with processes involving the use of dangerous materials, the removal of injurious dust and gases, the use of electrical plant and other matters, *it is essential* that experts having competent medical, engineering, electrical or other scientific training and experience should be employed by the State for dealing with such problems."

In view of the importance of the problem, it would appear desirable to lay down in the draft text of the Convention the principle that technical experts and specialists should be associated in the work of inspection. In view of the variety of systems adopted in the different countries for securing this collaboration, however, it would be desirable to leave countries free to regulate the methods of this collaboration according to their own circumstances and requirements.

#### *Other Authorities or Institutions undertaking Similar Inspection Work*

It was pointed out in the course of the survey of national systems that in every country there are, in addition to the actual labour inspection services, other authorities or public

or private institutions which inspect certain establishments. These inspections are often for some special purpose — the inspection of explosives, safety devices, hygienic conditions, etc., or they may be intended to support and facilitate the work of the labour inspectorates — visits organised by district, municipal or local authorities in order to check certain points.

In spite of their technical utility, these inspections carried out by different bodies have certain disadvantages. Apart from their multiplicity, which may seriously interfere with the normal working of the establishments they visit, they are likely to lead to overlapping and to endanger the uniformity of the work of inspection, because the labour inspector and the special inspector may express divergent opinions or issue different orders on the same point.

In order to get over these disadvantages, most countries try to co-ordinate the work of the various bodies concerned, either by legislative measures or at least by some working agreement.

In view of the importance of co-ordinated collaboration in this field, and as such co-ordination actually exists in the majority of countries, it would doubtless be possible to include in the draft text of the Convention a provision to the effect that collaboration between the labour inspectorate and other Government services or public or private institutions engaging in similar inspection work should be regulated by appropriate measures, so as to prevent overlapping and ensure uniformity in the activities of all these bodies. As the methods adopted in the different countries are extremely varied, however, the Conference might usefully discuss the desirability of such a provision and, if the decision is in the affirmative, the form it should take.

## TERRITORIAL AND MATERIAL ORGANISATION

### *Territorial Subdivisions*

The territorial organisation of inspection services is of fundamental importance for ensuring effective supervision. Theoretically the inspector should be in a position to visit and inspect at regular and sufficiently short intervals all the undertakings in his area and should be able to do so without having to spend too much time or money on travelling.

It follows that the inspector's area should be limited in size and therefore that the country should be divided up into inspection districts

In practice this method is the one applied in the great majority of countries the territory is divided into districts, each of which is generally under a chief inspector who is responsible for supervising and co-ordinating the work of all the inspectors carrying out the actual task of inspection in the district. The chief inspector is responsible to the central service or national central authority for the inspectorate of his district. In certain cases districts are subdivided and the task is carried out in each subdivision by one or more inspectors who are responsible to the district inspector.

In the few countries in which there is no territorial subdivision — countries in which industrial life is in its early stages or is concentrated in one or two centres — a nucleus of territorial organisation none the less exists in so far as the inspector or inspectors are stationed in the industrial centres.

The principle of subdivision of the territory for inspection purposes being accepted in practically every country, it might be thought possible to include this principle among the provisions of the Draft Convention or Recommendation. It would, however, probably be difficult to find an exact form of words for this purpose, because the subdivisions vary greatly in size from country to country and even within each country, not only on account of the national geographic and economic structure but also in accordance with the density of population and the intensity of industrial development.

Moreover, the subdivision of the territory is merely one means of ensuring the sufficient frequency and consequent effectiveness of the inspectors' visits, and this question is dealt with in the part of the Report concerning the standard of inspection.

### *Material Organisation*

There can be no doubt that the material organisation of the inspection service is a problem for the internal administration of each country. There are, however, two aspects of this subject which can influence considerably the efficacy of the system and which should therefore be examined here. The first is the question of travelling expenses, and the second is the provision of offices for the inspectors.

*Travelling Expenses*

It is essential to ensure that regular visits are paid to every establishment, including those situated at a distance from the inspector's place of residence. Even in districts of small area the necessity for repeated visits to such undertakings involves considerable expense, which should in no case be borne by the inspector himself. Most countries have therefore adopted the system of refunding to the inspector any travelling expenses incurred in the course of his duties, either by granting travelling allowances or by providing him with free transport on public transport services. This is a practice which is not likely to be expressly laid down by legislation but is based on custom or on administrative or other rules.

In view of the importance of the question and the fact that in practically every country the inspectors' travelling expenses are refunded it would seem desirable to include in the draft text of the Convention a provision to the effect that the inspector should not be required to meet out of his own pocket any travelling expenses necessitated by his duties.

*Offices*

A large fraction of the inspector's time is taken up by visiting undertakings, but another important part must be devoted to correspondence, the preparation of reports and statistics, interviewing employers and workers, etc.

If they are to carry out those duties satisfactorily the inspectors in the various districts or other territorial subdivisions must have at their disposal offices in a central situation accessible to all those concerned and suitably equipped. The inspectors' private dwelling can scarcely be expected to fulfil those conditions. In some countries the inspectors are provided with these offices and it would be desirable for the custom to become general.

The Office therefore feels justified in proposing to insert in the draft text of the Convention a clause inviting countries, when organising their inspection services, to make provision for a sufficient number of offices in which the inspectors and other officials of the service can work. These offices, which should be open to those concerned at all reasonable hours, should be fitted up and equipped in accordance with the requirements of the service.

*Safety and Hygiene Exhibitions, etc*

In a certain number of countries there are subsidiary institutions of this kind which are of undoubted utility for the training of young inspectors in particular and for the education of the public in general. By exhibiting new appliances they provide employers and workers with an opportunity of becoming acquainted with their working and their advantages or disadvantages. They sometimes provide the inspectors with valuable information on various scientific or technical matters.

Except in very rare cases these subsidiary institutions are outside the framework of the labour inspectorate. They are usually entirely independent and may be either public or private, they vary exceedingly in purpose and in structure. It has therefore not been thought possible to draft a sufficiently clear and exact proposal on this subject for inclusion in a draft international Convention (cf. however under § 12, Methods and Standard of Inspection Efficiency of Inspection, below).

**§ 5. — Inspecting Staff**

In carrying out their duties labour inspectors must possess not only wide and varied knowledge but also a very special degree of judgment, understanding, probity and tact. They are required to harmonise the often conflicting views of workers and employers and to defend the interests of the public before administrative and judicial authorities, and they must therefore possess the fullest possible personal authority and ability.

The problem of the staff of the labour inspectorate is therefore of the greatest importance. Although for administrative reasons it may not be possible to lay down uniform detailed rules for every country it would seem indispensable to include in the draft text of the Convention some minimum requirements, more particularly as regards the recruiting and status of inspectors.

**RECRUITING OF INSPECTORS**

It is obvious that the labour inspectorate cannot fulfil its mission unless it has a staff recruited under satisfactory conditions. The methods employed for the selection and train-

ing of new inspectors are very varied and it would be somewhat difficult to lay down definite rules on the subject. National legislations are far from being in agreement upon the actual manner of recruiting. In some countries inspectors are recruited by personal selection and in others by competitive examination. Moreover the conditions of these competitive examinations vary considerably from one country to another. That is presumably why the Recommendation of 1923 merely indicated in paragraph 13 that "It is essential that the inspectors should in general possess a high standard of technical training and experience, should be persons of good general education, and by their character and abilities be capable of acquiring the confidence of all parties."

In view of the diversity of national systems it is impossible to lay down detailed rules to be followed in the recruiting of inspectors and it will probably be sufficient to stipulate that the members of the inspection staff should be recruited solely in the light of their qualifications for the tasks to be entrusted to them.

Such an obligation, which merely applies to the question of principle, would leave national authorities entirely free to organise their systems of recruiting as they may think fit.

#### THE PROBATION AND TRAINING OF INSPECTORS

A second problem which has been dealt with in the legislation of various countries is that of the probationary period which new inspectors must undergo in order to test their ability and train them for their duties.

In most countries inspectors are not confirmed in their appointments until they have completed a probationary period of varying length during which the authorities try to assess their ability and initiate them in their various activities. The process of initiation is not always carried out on the basis of a clearly defined plan. In some countries, however, the system of training is very highly developed so as to make the new inspectors thoroughly familiar with their delicate tasks before they are left to carry them out on their own responsibility. Moreover, the inspectors are often required at the end of the probationary period to pass a qualifying examination to show that they have reached the necessary standard of training.



## THE ORGANISATION OF LABOUR INSPECTION

The importance of this systematic training of inspectors for their future duties did not escape the notice of the 1923 Conference, for paragraph 15 of the Recommendation states "that inspectors on appointment should undergo a period of probation for the purpose of testing their qualifications and training them in their duties, and that their appointment should only be confirmed at the end of that period if they have shown themselves fully qualified for the duties of an inspector "

In view of the considerable divergencies in law and practice between the various countries it has not been thought possible to suggest including a provision of this kind in the draft text of the Convention

### STATUS OF INSPECTORS

The very great majority of countries now recognise the necessity for ensuring that the inspectors' conditions of service are in keeping with the social importance of their mission.

The inspection service cannot enjoy the authority it requires unless the inspectors are guaranteed by their conditions of employment a certain minimum of security and a social position which places them above any influences that might affect their impartiality. It is scarcely necessary to point out that if an inspector's retention in the service depends on political or personal considerations he can never carry out his duties in the independent and unbiased manner that is desirable. Hence inspectors must be guaranteed stability of employment, equitable remuneration, reasonable possibilities of promotion and the right to a pension. Only by providing such conditions can suitable candidates be attracted to the inspection service.

It will be remembered that the 1923 Recommendation pointed out in paragraph 14 that "the inspectorate should be on a permanent basis and should be independent of changes of Government, the inspectors should be given such a status and standard of remuneration as to secure their freedom from any improper external influences "

For all these reasons it is thought that the proposed Draft Convention should contain a provision to the effect that the service regulations for the labour inspectorate should guarantee the inspectors the authority and impartiality necessary for the fulfilment of their duties

It is clearly impossible to lay down in detail the conditions of service which inspectors should enjoy. There is one point, however, the principle of which could be included in the text: the guarantee of stability of employment. Their duties place inspectors on the footing of magistrates rather than on that of civil servants in general. Probably the best way of securing the desired result would be to define the reasons for which inspectors may legitimately be dismissed.

The Office considers that the proposed Draft Convention might contain a provision to the effect that the service regulations for the inspectorate should safeguard inspectors against any influence that might destroy their independence or impartiality and in particular that an inspector, once he has been confirmed in his appointment, should be immune from dismissal except for one of the following reasons:

1. Age limit
2. Duly proved incompetence
3. Grave dereliction of duty
4. Conduct incompatible with his functions
5. Invalidity
6. Abolition of post

#### PARTICIPATION OF WOMEN IN THE INSPECTION SERVICE

Women share in the work of the inspection services of so many countries that it is scarcely necessary to point out how desirable it is to have women inspectors and to fix the proportion of women in the inspectorate according to the numerical importance of women and children in the undertakings subject to inspection. There can, it would seem, be no doubt that the employment of women inspectors is indispensable in connection with the protection of these two categories of persons.

A comparison of the conditions under which women collaborate in the work of inspection in the various countries reveals the following common features:

Generally speaking it may be said that the duties carried out by men and women inspectors are intended to be mutually complementary; the essentially technical questions are usually left to the men, whereas the women inspectors are required more particularly to pay attention to conditions of hygiene

and well-being of the workers and, as a rule, to the whole of the social side of labour protection

In view of the divergencies of their functions certain countries do not require the same degree of technical training in women inspectors as is normally required of men. The differences in the qualifications required of the two groups — although the standard of qualifications may be equally high — does not prevent women inspectors in a large number of countries from having the same powers and the same authority as their male colleagues. On the other hand their opportunities of promotion to a higher grade are often limited. It should also be noted that the salaries of women inspectors are frequently lower than those of men.

From the brief indications given above it may be concluded that the draft text of the Convention might well contain a provision to the effect that inspection services should include women, and indeed this principle was laid down already in the Constitution of the International Labour Organisation.

Apart from mentioning this principle the proposed Draft Convention can probably add nothing to the principles laid down in the 1923 Recommendation.

## § 6 — Powers of Inspectors

### POWERS OF SUPERVISION

The inspectors' powers of supervision include, as was seen above, two mutually complementary rights: the right of free access to establishments and the free right of inspection within the undertakings themselves. The conditions for the exercise of each of those rights may be rapidly reviewed.

#### *Right of Free Access to Establishments*

It was pointed out that in connection with free access to establishments all the national regulations now agree in granting to labour inspectors — by way of exception to the principle of the inviolability of private premises — the right to enter establishments without previous notice and by night as well as by day. Access is granted without previous warning because the legislative authorities considered that the unexpectedness of a visit was an essential condition for

its success, access is permitted by night as well as by day because night work, for which particularly stringent regulations exist, must naturally be supervised by the inspectors in the same way as work during the day.

National regulations are in agreement on these two essential points, but they differ on a third point — should the inspectors exercise their free right of access even outside normal working hours ?

It is true that visits outside normal hours are nowhere prohibited, but in some countries the inspectors must first obtain a warrant from a judicial or administrative authority

On the other hand — and presumably to prevent clandestine work from being granted any preferential treatment, which would certainly be contrary to the spirit of social legislation — the laws of the vast majority of countries confer on labour inspectors the right to enter establishments at any hour of the day or night — and therefore outside normal working hours — if they presume that work subject to supervision is being carried on.

There would therefore probably be no very serious obstacles to the inclusion in a Draft Convention of this wider definition of the right of free access to establishments

There remains the question of the establishments to which free access should be guaranteed — in other words, the establishments subject to inspection

It was pointed out above that the range of establishments subject to supervision was defined on the one hand by the scope, which varies considerably, of the various national laws on labour inspection and on the other hand by the scope, which also varies greatly, of the various labour laws for the enforcement of which the labour inspectorate is responsible

It would seem to be difficult in view of the great divergencies of the national regulations to arrive at a definition of establishments subject to inspection which could be applied in every country.

But it was also pointed out that for the purpose of defining the right of free access the question of the prior definition of the establishments subject to supervision had now lost much of its importance, because the authors of most of the regulations had felt it necessary to confer on inspectors the right to enter any establishment which they presumed to be

subject to their supervision. That means that inspectors enjoy a large measure of discretionary authority in this matter and it therefore does not seem necessary — even in national legislation, and still less in international regulations — to begin by an exact definition of the establishments to which the inspectors must be guaranteed the free right of access.

The only reservation laid down in the laws — and it is fully justified in this case because it is merely a question of determining whether the establishment in question is or is not liable to inspection — is that the visit should take place during the day.

The definition of the right of free access would be incomplete if it did not indicate what were the premises or workplaces to which the inspectors should have access. According to the regulations of every country, the inspectors have access not only to workshops in which work is normally carried on but also to all premises or workplaces — including ancillary establishments and outbuildings — in which work might be carried on. It is only premises normally used as dwellings which, in accordance with the principle of the inviolability of private premises, are exempt from the scope of the inspectors' right of access, and unless the occupant gives his consent the inspector cannot enter without a judicial warrant.

These are the different elements which go to make up the right of free access to establishments. They are incorporated in the majority of national laws and may therefore be included in the draft text of the Convention.

The formula suggested for dealing with this point is based on that contained in the 1923 Recommendation and would cover the following points. The right of labour inspectors provided with proper credentials to enter freely and without previous notice by day or by night any premises in undertakings where they have reasonable grounds to presume that persons enjoying legal protection are working, and to enter by day any establishments which they have reasonable grounds to presume are liable to inspection.

#### *Right of Inspection of Establishments*

The right freely to inspect establishments, like the right of free access, is organised in an almost uniform manner — save for a few points of detail — by the various national laws

It was pointed out that the rights conferred on inspectors in this matter are essentially three (1) the right to question persons, (2) the right to examine registers and notices; (3) the right to examine materials used in the working of the undertaking — together with the general right to supervise all matters falling within their competence

### *Questioning of Persons*

On this point it was found that all the national legislations, out of a desire to ensure the frankness and sincerity of the declarations made and their treatment as confidential, as well as to protect workers against the possibility of reprisals, prescribed that inspectors must have the right to question the staff of the undertaking *without witnesses*, which of course does not mean that the inspector may not bring two or more witnesses together for the purpose of comparing their evidence if necessary

The laws of certain countries go further and give the inspector the right to summon the parties concerned to his office and take their evidence on oath

For the purposes of international regulations it will probably be sufficient to give formal confirmation to the right of interrogating persons without witnesses, leaving it to national laws to deal with the methods by which this should be done

### *Checking of Registers and Notices*

Similarly, the vast majority of national laws give inspectors the right to demand the production of books, registers, records and any other documents which the employers and workers are obliged to keep under labour legislation, to satisfy themselves that they are in conformity with the statutory provisions, to make copies or extracts and, in certain countries at least, to remove them for further examination.

As a result of the powers thus granted to them, the inspectors can at once determine, before actually inspecting the undertaking, whether the conditions of work are in accordance with the requirements of the legislation. It was pointed out, however, that the amount of documentary evidence that has to be checked in this way was far from being the same in every country. The number of documents that has to be produced naturally depends on the extent and importance

of the labour legislation under which they have to be kept. It would therefore be useless to enumerate in a Draft Convention the various documents which the parties must keep and produce to the inspectors on request, for some of them might refer to matters not yet dealt with in national regulations.

In this case, as in others, the essential point is that the inspectors should have the right to see and examine all records the keeping of which is required or may subsequently be prescribed by national legislation.

Similarly, the inspectors are entitled to order the posting up of notices — abstracts of legal provisions, time-tables, works regulations, collective agreements, etc — which have to be posted up in undertakings in accordance with various labour laws.

In this case also all that is required in an international Draft Convention is to confirm the right of the inspector to order the posting up of notices, while leaving it to national legislation to determine what notices should be posted up in undertakings.

#### *Right to take Samples of Substances used in Undertakings*

Some national laws also give inspectors the right to take and carry off for purposes of expert examination or laboratory analysis samples of substances used in the undertaking. It was found that a check of this kind was the only means of discovering whether certain substances or materials which workers were called upon to manufacture or handle were dangerous to health.

In view of the seriousness of the dangers to which the workers may thus be exposed it would certainly be desirable to confirm this right by international Convention, although it is not yet expressly recognised under all national laws.

No one denies the utility of this measure, and the inspectors already exercise the right with the consent of the employers in most countries.

#### *General Powers of Supervision*

In addition to the specific rights of supervision and action, the main features of which have been recapitulated above, the inspectors also have a general right of supervision which permits them to undertake any interrogation or enquiry which they consider necessary in order to determine whether

all the provisions of the labour legislation which they are required to enforce are being faithfully applied

It would be impossible to give a detailed list of all the forms of supervision to be exercised by the inspectors, and therefore the national laws have had to use an elastic formula which is at the same time sufficiently comprehensive to cover all the cases that may arise in practice. Such a course is naturally all the more necessary in the case of international regulations.

It would seem to follow from this brief survey of the inspectors' duties of supervision that the law and practice of the various countries provide sufficient support for the following principles to allow of their being included in the proposed Draft Convention.

Inspectors duly provided with credentials should have the right

- (a) to interrogate without witnesses the employer and staff of the undertaking,
- (b) to require the production of all books, registers, documents and other records the keeping of which is prescribed by legislation,
- (c) to supervise and enforce the posting up of the statutory notices,
- (d) to take and remove for purposes of analysis samples of materials and substances utilised or handled in the undertaking;
- (e) in general to carry out any examination, test or enquiry considered necessary to ensure that the provisions of the legislation to be enforced are actually being observed.

#### POWERS OF REGULATION OF LABOUR INSPECTORS

In the chapter of the Report dealing with this problem the powers of regulation of labour inspectors were defined as meaning the right to take executive measures of a preventive character with a view to protecting workers against dangers to their health or safety resulting from the premises, plant or methods of working of the undertaking.



This is undoubtedly one of the most important duties of the supervisory officials and it is therefore essential that it should be confirmed in international regulations

But whereas, as has been pointed out above, the national regulations deal in a more or less uniform manner with the inspectors' rights of access and inspection, they differ considerably with regard to their powers of regulation

In considering the possibility of international regulations on this subject one must bear in mind the conditions under which inspectors are called upon to exercise these powers — first of all with regard to the issue of permits for new establishments and subsequently after establishments have begun operations

#### *Powers in Connection with Permits for New Plant*

It was pointed out that a certain number of recent regulations entrusted the inspection services with the right to check in advance the plans for new establishments or plant covered by the legislation concerning the health and safety of workers

For this purpose all plans for the erection, fitting out, transformation or extension of undertakings (including machinery, appliances and other equipment) must be submitted to the inspectors in advance for their approval. If the inspectors find that the plans are not in accordance with the statutory provisions on hygiene and safety they may refuse to permit the work to begin until the changes or corrections which they consider necessary for the health and safety of the staff have been made. In those countries therefore the inspectors have very extensive discretionary powers in connection with the issue of permits for new premises or plant

In most countries, however, the granting of permission for new premises is in the hands of other authorities (public health bodies, municipalities, etc.) and the labour inspectorate is merely required to express an opinion as to whether the plans are in accordance with the provisions of the hygiene and safety legislation

In this case their duties are merely advisory, but they are far from being negligible, especially in countries which permit the inspectors to appeal to the higher administrative authorities when they consider that sufficient account has not been taken of their recommendations

In yet other countries the inspectors have no power to intervene directly or indirectly in this matter unless the head of the undertaking on his own initiative submits the new plans to the inspectorate for an opinion

In view of these differences, which, as will be seen, concern not so much the methods of preventive supervision as the principle of supervision, it would probably be difficult to propose uniform rules that, if adopted, would not conflict with national customs and traditions and even be in contradiction with the administrative systems of certain countries.

Failing a definite obligation in a Draft Convention it would seem possible in a Draft Recommendation to include a clause recommending States to give the labour inspectorate some part in the advance approval of plans for new premises and plant

#### *Powers of Regulation after Undertakings have begun Work*

The vast majority of the regulations now grant labour inspectors the power to issue injunctions concerning the prevention of accidents and occupational diseases caused by defective conditions in plant or machinery

While the utility of such preventive action is generally recognised, the legal force of the orders issued by inspectors is by no means the same in every country. It was pointed out above that the national regulations on this subject may be classified in three main groups

(1) In certain countries — a very small group — all that the inspectors can do is to *advise* heads of undertakings to make certain changes in their plant in the interests of the health and safety of the workers, or they may report to their superiors or to some other competent authority any defects that they note. In such systems the inspector is merely an expert adviser with no executive powers

(2) In a second group, which includes the majority of countries, the orders of the inspectors are imperative in so far as any refusal to give effect to them is assimilated to an offence against the laws and regulations under which the order is issued, and the offender may therefore be prosecuted. It may be recalled that in cases of this kind the procedure is usually a summary and rapid one, and the penalties partic-

ularly stringent. Under this system it may be said that the endeavour of the legislative authority has been to place the inspector's injunctions on the same legal footing as the provisions of the legislation itself, but at the same time to give the parties concerned certain guarantees of judicial procedure.

(3) In view of the delays inherent in any judicial proceedings, certain countries have considered that a judicial sanction was not the most satisfactory means of dealing with *imminent dangers*. In quite a number of recent regulations, therefore, the injunctions of inspectors are given direct executive force, which means that the inspector may, on the expiry of the period specified in the written injunction, have any repairs which he considers necessary carried out at the expense of the occupier of the premises, even without the occupier's consent. Moreover, if the employer tries to obstruct an inspector, or if there is imminent danger, the inspector may order the undertaking to stop work until the essential repairs have been carried out.

The employer is naturally given a guarantee against arbitrary measures in that he is permitted to make an appeal to a higher administrative authority, which is completely independent and competent to deal with the matter. It should be noted that the lodging of an appeal does not constitute a stay of execution.

What conclusions should be drawn from this brief analysis? At first sight it would seem difficult to reconcile the three standard solutions adopted for dealing with the powers of regulation of inspectors and to fuse them into a single formula for the purpose of international regulations.

On consideration, however, it appears that the divergencies in this case concern the methods rather than the principle. Every country, with very few exceptions, recognises the injunctions of inspectors as having executive force, but they differ upon the procedure to be followed to give effect to those injunctions.

This surely means that there will be no insuperable difficulties in securing the adoption of a Draft Convention confirming the power of inspectors to issue injunctions with imperative force in matters of hygiene and safety, subject always to any right of appeal that may be prescribed by national legislations.

In view of the variety of the methods adopted, the form of words used in the international regulations should of course define the inspector's powers of regulation sufficiently precisely to impose a definite obligation on States, but also with sufficient elasticity to ensure that no State is obliged to make very far-reaching changes in its administrative or judicial practice.

The clause in question, based on the wording of the Recommendation of 1923, might include the following points.

- (a) The inspectors should have the power to make orders in writing with executive force requiring that the plant of undertakings should, within a time-limit fixed by the inspector, be brought into conformity with the laws and regulations concerning health and safety, or to secure the making of such an order by the competent authority ;
- (b) The execution of these orders should be suspended only by an appeal to the higher administrative or judicial authority specified in national legislation ,
- (c) When imminent danger has been duly shown to exist, the appeal should not constitute a stay of execution

## **§ 7 — Obligations of Employers, Workers and Third Parties**

It was pointed out in Chapter IV that the supervision of labour legislation by the labour inspector cannot be effective unless certain supplementary measures are taken in addition to the granting of specific powers to the inspectors. It is not sufficient for the inspector to visit the undertaking, inspect the work that is being carried on and question the employer or his representative and the workers. He must also have information on points of fact which can be supplied only by those concerned. This means that certain essential data for checking the enforcement of legislation must be regularly compiled and placed at the disposal of the supervisory officials. This is achieved by means of notices posted up in the workplace, registers, lists, or returns prepared by the employer, booklets and forms filled up for some or all of the workers, and notices, reports, and information supplied by the employer or the workers to the inspectors.

In the course of the survey of national laws, a dual distinction was made, in the first place between obligations

imposed respectively on the employers, the workers and third parties, and in the second place between measures that are more or less independent of the matters dealt with in labour legislation and those which are common to several laws or which may be considered as specifically required for the enforcement of certain given laws. The time has come to draw practical conclusions from this survey.

Most of the obligations in question fall upon the employer, but the workers have also certain duties towards the labour inspectorate. Their duties, however, are chiefly connected with the supply of information as a counterpart to the inspectors' right of interrogation. In this section the workers' obligations can be considered together with the corresponding obligations of the employers.

With regard to the obligations sometimes imposed on third parties, it was mentioned that parents and guardians, for instance, must provide certain information concerning the employment of children, and that doctors must supply the labour inspectors with information concerning certain diseases — in particular, occupational diseases. These provisions, however, do not seem to be sufficiently general to permit of any detailed and specific conclusion being drawn with regard to international regulations.

It will suffice, therefore, to consider the obligations of the employers and, to a lesser extent, those of the workers.

#### MEASURES BEFORE THE OPENING OF AN UNDERTAKING OR THE BEGINNING OF CERTAIN OPERATIONS

There can be no doubt that the supervision of the enforcement of labour legislation is appreciably facilitated when the labour inspectorate is kept regularly informed of the existence of undertakings which may possibly fall within the field of its activity. For this reason, many laws specify that an industrialist who proposes to open an establishment or to make any change in the nature of his business or to take over from some other employer should notify the labour inspectorate of the name and address of the employer or his representative, the nature and situation of the establishment, the work that is to be undertaken, the nature of the machinery and power to be used, and, in some cases, the number of workers to be employed.

It must be admitted, however, that this measure is not always required for all establishments subject to the supervision of the labour inspectorate. In many countries the legislation on this point refers solely to factories or establishments which require supervision from the point of view of safety and hygiene or those which involve special dangers on account of the operations performed or the plant used. It would therefore seem doubtful whether a general obligation could be imposed on employers internationally to notify the labour inspectorate of the opening of every new establishment.

On the other hand, it would be equally undesirable to restrict such an obligation to certain categories of establishments to the exclusion of all others. In view of the importance of this obligation for the successful working of the labour inspectorate, however, it would be desirable to recommend a measure of this kind to the legislative authorities, as was done in the Inspection (Building) Recommendation, 1937 (No. 51).

It might therefore be possible to include in a Draft Recommendation the principle that any person who proposes to open an industrial or commercial establishment or to carry out extensive transformations or to take over such an establishment from another person should notify the labour inspectorate in advance.

#### GENERAL MEASURES TO FACILITATE THE WORK OF THE INSPECTORATE

##### *The Obligation to Assist Inspectors in the Performance of their Duties*

It was pointed out that several laws contain certain very general provisions for facilitating the supervisory work of the inspectors. Mention was made of the obligation to assist inspectors in the course of their investigations, to give them all the necessary information, to keep an inspection register at their disposal, to post up the name and address of the inspector, to bring the texts of certain Acts or regulations to the notice of all the workers, etc. The value of all these measures is obvious, and some of them might well be generally applied. No one can seriously doubt that it is the duty of the employer and of the workers to facilitate as far as possible the work

of the labour inspectors and provide them with any information which they are entitled by law to require. It should be noted, however, that such an obligation is merely a corollary to the powers conferred on the inspectors and it does not therefore introduce any new factor. Moreover, the obligation cannot be defined by itself, but only in terms of the inspectors' powers (right of access, inspection, interrogation, etc.) and the obligations of the parties concerned (to keep, produce and hand over certain records, documents, etc.) It does not therefore appear desirable to lay down in the future international regulations a general obligation of this kind in addition to the provisions concerning the corresponding powers of the inspectors.

*Registers, Books, or Notices of a General Character*

The other measures referred to can be excluded at once from the future regulations. There are only certain countries in which the legislation prescribes the keeping of a register of inspection and such a register may contain a great variety of information. Sometimes all the records that have to be kept must be entered in the one register; in other countries the register is merely for the purpose of recording the inspector's observations, in yet others it is intended merely to contain the instructions issued by the inspector concerning health and safety in the undertaking. This question must therefore be considered as one to be left to national legislation.

Similarly, the obligation to post up certain notices of a general character, such as the name and address of the inspector or of the competent medical inspector, is not one to be inserted in international regulations.

It would be impossible to make it compulsory for employers to post up the texts of Acts, regulations, orders, etc., without indicating what texts are referred to, but a decision on that point depends on the nature of the legislation in question. International regulations, therefore, have so far been restricted to a recommendation (paragraph 17 (b) of the Recommendation of 1923) and have contained an imperative clause only when dealing with some specific question (e.g. Article 17(3) of the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32), Article 3 of the Safety Provisions (Building) Convention, 1937 (No. 62)).

It might perhaps be suggested that the posting up of certain definite notices might be prescribed in an international Draft Convention concerning labour inspection — for example, the posting up or entering in a register of instructions issued by the labour inspectors concerning working conditions and, in particular, conditions of health and safety in a given establishment

It was pointed out that in countries in which the labour inspectors have powers to issue regulations, the posting up or entering of their instructions in a register was normally prescribed. Such a measure is useful both for the inspectors visiting the establishment and for the parties concerned.

But it would appear difficult to include this point in the proposed international regulations, because there are only a few countries in which such an obligation is prescribed by national legislation.

#### *Measures to Secure the Enforcement of Certain Labour Laws*

##### *Registers, Notices, etc*

The fundamental obligations imposed on the parties to ensure the strict enforcement of labour laws are determined by the purpose of those laws. It was pointed out that certain measures referred to employed persons, but that in some countries they applied to the whole staff of undertakings and in others only to certain categories, such as women, children and young persons. There are numerous special obligations concerning the observance of hours of work, breaks, night work, Sunday work, holidays with pay, etc. There are others connected with the payment of wages. The measures for the supervision of home work are usually particularly strict. There are also a variety of measures for ensuring the enforcement of provisions concerning hygiene and safety and, in particular, the prevention of accidents and occupational diseases. The present survey has been restricted to the most important questions, although there are many others that could be added to the list. These measures, as was seen, include the obligation to post up certain notices, keep certain registers, give notification of certain points, etc., and to keep all documents at the disposal of the labour inspectors. The question arises whether these obligations can be



summed up in one or more general principles suitable for inclusion in the text of draft international regulations

It should be noted that international legislation, like national legislation, has often already confirmed these principles. The Conventions on hours of work, the weekly rest, holidays with pay, the minimum age, minimum wages, and certain questions of hygiene (white lead) or safety (dockers and building) contain clauses concerning the supervision of the enforcement of the Conventions

The form of words employed in these Conventions is not always the same, but varies according to the purpose of the regulations. Some of the Conventions, and more particularly those dealing with hours of work, holidays with pay, and the minimum age (industry), expressly prescribe the posting up of certain notices and the keeping of registers, whereas others merely stipulate the necessity for supervision, leaving the national laws to determine the methods to be employed (e.g. minimum wage, minimum age for non-industrial employment)

It should also be noted, however, that several Conventions, such as those on social insurance, contain no provisions concerning supervision. The reason is that very often the national laws differ quite appreciably as to the forms and extent of the obligations imposed on the parties concerned.

Such being the case, it is questionable whether a provision could be included in the international regulations on labour inspection concerning measures for securing the enforcement of labour legislation. It would be undesirable to repeat what has already been laid down in other Conventions or to attempt to combine in a single formula obligations which vary according to the numerous subjects dealt with. It may therefore be concluded that it would not be wise to deal with this problem in the proposed international regulations. In view of the diversity of the obligations in question it is scarcely possible even to formulate a recommendation.

#### *Notification of Industrial Accidents and Occupational Diseases*

There is no need to emphasise the importance of the part played by the labour inspectorate in connection with industrial accidents and occupational diseases. The extent to

which the experts in the inspection services contribute towards the prevention of accidents and diseases by their enquiries and scientific research is common knowledge. They must, however, be kept constantly informed of the facts if they are to carry out this task.

Under the great majority of laws the employer is obliged to give notice of accidents occurring in his undertaking. There are, however, certain distinctions between the regulations on this point in various countries. In some cases the inspectors are directly notified, whereas in others the accident must be reported to some other authority, such as the police, the social insurance institutions or the law courts, which are required to pass the information on to the labour inspectorate. Similar differences exist as to the nature and gravity of the accidents which must be notified. Some laws are very general in their scope, whereas others restrict the necessity for notification to serious accidents or those causing serious bodily injury or death. The time-limits within which notice must be given are not fixed at the same figure in different countries. In short, although the countries are in agreement as to the principle, they differ as to the methods of applying it.

There is now general agreement as to the desirability of notifying cases of occupational diseases to the labour inspectorate. Here again, however, the national laws vary. The notion of an occupational disease is not always defined in the same way. In certain laws the workers, or the doctors in attendance, are required to notify diseases to the competent authority in place of the employer, or in addition to his notification. Notification need not always be made directly to the labour inspectorate and sometimes this obligation is replaced by the obligation to submit written reports, etc. In this case also, therefore, the laws agree upon the principle but differ upon the means of application.

*International regulations* — In the case of industrial accidents, the principle that the employer should notify the competent authority was recognised internationally both in the Labour Inspection Recommendation, 1923 (No. 20), and in the Inspection (Building) Recommendation, 1937 (No. 54). The question arises whether it could therefore be dealt with in an international Convention concerning labour inspection.

If it were, it would seem desirable not to restrict the possible regulation to industrial accidents, but to include occupational diseases, which are becoming assimilated to accidents in an increasing number of countries. In view of national differences, it would be necessary merely to lay down the principle and to leave the methods of its application to national legislation.

In formulating a joint obligation for the two cases under consideration, it would be necessary to insist on the one point which is essential for the labour inspectorate, namely that it should be informed of industrial accidents and cases of occupational disease. It does not seem necessary for international purposes to make either of the parties concerned specially responsible for notification.

The draft text of the Convention might therefore contain a clause to the effect that the labour inspectorate should be notified of industrial accidents and cases of occupational diseases in a manner to be prescribed by national legislation.

### **§ 8 — Penalties for Obstructing Inspectors**

It was pointed out that the great majority of laws provide penalties to protect the labour inspectors in the exercise of their duties and to repress any acts of obstruction. It is true that in the great majority of countries the advisory and educative aspect of the work of the labour inspectors in their dealings both with employers and with workers is placed in the foreground, but nevertheless the legislation of every country provides these supervisory officials with legal weapons necessary for ensuring the unhampered exercise of their duties. It is doubtless because they have power, if necessary, to overcome any resistance by force that the labour inspectors enjoy sufficient authority to base their activities on persuasion rather than on compulsion. Penalties for cases of obstruction are therefore essential and a clause to this effect should be included in the international regulations.

Although the principle is generally accepted, it must be remembered that the nature and gravity of the penalties vary from country to country. It was pointed out in the survey above that in many countries the legislation included a general formula of a more or less comprehensive nature (referring to infringements of statutory provisions, failure

to comply with legal obligations, interfering with the inspectors in the exercise of their duties, etc.) In other countries the general formula was supplemented by various detailed provisions (concerning refusal to admit the inspector, refusal to give the information required, giving false information, etc.) In yet other countries the general formula was replaced by a number of provisions containing penalties for infringements of the different clauses enumerated in the legislation. It would therefore seem to be impossible in an international text dealing with labour inspection to define what is meant by obstructing the inspectors, the problem must be left to national legislation to solve in accordance with the methods in force in the different countries.

It must suffice, therefore, to lay down the principle that every State Member of the International Labour Organisation which ratifies the future international Convention shall impose penalties for obstructing the inspectors in the course of their duties.

### § 9. — Enforcement Proceedings

#### THE INSPECTOR'S DUTY TO TAKE ACTION IN CASE OF CONTRAVENTIONS

The creation of a well-organised system of inspection strengthened by an adequate system of sanctions for cases of contraventions will not be effective if the inspector fails to make use of the means at his disposal to secure observance of the law.

Normally the inspector who discovers a breach of the law has no option but to carry out his duties, which may mean that he need only report the case to the competent authority or resort to the means at his disposal to secure due observance of the law or regulation under his supervision. In that respect he is in the same position as any law officer who is responsible for the application of such laws as have been placed under his supervision. Failure to take action will expose the responsible official to disciplinary measures which may not always be stipulated by law.

The powers of compulsion at the disposal of the inspector may include the right to inflict penalties directly upon a party who is found at fault or refuses to obey the injunctions of the inspector to remedy the offence. But in most countries

the inspector must institute proceedings before the competent tribunal or remit the case to the competent authority for appropriate action to be taken

Actually only one or two countries appear to have adopted legislation providing for special disciplinary measures against an inspector who has not exercised the means at his disposal to prevent breaches of the law. In one of those cases the special measures are intended only for the case where continued breaches of the law have been tolerated, that is, where the inspector has been specially guilty of tolerating a very serious offence

To ensure the proper discharge of his functions by the inspector the great majority of the countries have so far relied upon the ordinary disciplinary measures which are applicable to other Government officials in the discharge of their duties. In view of that situation it would seem that no proposal need be made for the inclusion of a provision on that subject in either an international Convention or Recommendation

#### WARNING BY INSPECTOR BEFORE TAKING ENFORCEMENT MEASURES

In discharging his duties with the object of securing due observance of the social laws under his supervision, the inspector is inevitably faced with the problem whether or not to give the offender (including the employer or his representative according to the case) a warning before taking action against him. This may be the case regardless of whether the inspector's duty requires, in the particular case, that he should either inflict a penalty directly on the offender or institute proceedings against him or merely report the offence to the competent authorities

It is highly improbable that all cases would be of such a nature that the inspector need not have to rely on his own judgment in deciding whether or not to warn the offender that he has broken the law and must remedy the offence. Procedural law on the other hand may help the inspector by specifying in what circumstances the offender is entitled to receive a warning before a penalty is imposed on him by administrative procedure or legal action is taken against him. Such a rule can create in favour of the accused a right

upon which he will be entitled to insist, and it is the inspector's duty not to infringe that right

In view of the wide range of possible offences, there could not of course be any simple rule on the subject of the warning to be given. A general distinction would merely be made between serious offences and trivial ones. The former would deprive the offender of his right to a warning. Otherwise the party concerned might be tempted to commit even a serious offence, if he knew that no penalty was to be incurred until he had been warned at least once to comply with the law.

There are of course a few cases where special regulations expressly lay down that the offender will not be liable to the prescribed fines unless he has been given a warning to that effect either by the inspector or some other competent authority.

Then there are one or two countries where the law requires a warning to be given to the offender before he can be prosecuted, without specifying whether the rule applies to serious offences as well as to minor ones. But in the majority of countries where special provisions have been adopted on this point, it is usually prescribed that legal proceedings may be instituted without warning in the case of serious offences.

Judging from the information which is available on the subject, it would seem that the practice in the majority of countries is in favour of the inspector warning the offender in all cases of minor offences, which include the case of the infliction of penalties by administrative procedure, and exceptionally in the case of serious offences. The practice thus established may even lead to the emergence of a custom which to all intents and purposes would have the force of law.

While it is all in the interest of the proper administration of labour law that unnecessary litigation should be avoided and consequently that an offender should be warned, at least in the case of minor offences, before the machinery of sanctions is put into operation, the principle must nevertheless be safeguarded which reserves to the inspectorate power to take action immediately and without previous warning by the inspector, against a party who has committed a serious offence.

It would not be necessary for this purpose to make it compulsory for the inspector immediately to take action before he has warned the offender and given him a chance to comply with the law. There would be sufficient guarantee if it were agreed that legal proceedings might be taken, without previous warning by the inspector, against the party who has committed a serious offence

The Office would accordingly suggest as suitable for insertion in the proposed Draft Convention the principle laid down in Paragraph 17 of the 1923 Recommendation to the effect that

“ The employer and the officials of the establishment are responsible for the observance of the law, and are liable to be proceeded against in the event of deliberate violation or of serious negligence in observing the law, without previous warning from the inspector ,

“ It is understood that the foregoing principle does not apply in special cases where the law provides that notice shall be given in the first instance to the employer to carry out certain measures ”

#### THE INFLICTION OF PENALTIES BY ADMINISTRATIVE PROCEDURE

In the normal course of events penalties provided by law are imposed by the competent courts of law. But the infliction of penalties for breaches of the laws or regulations which come under the supervision of the labour inspectorate is sometimes carried out by administrative procedure. In other words, the law sometimes gives either the inspector or the higher administrative authorities power to impose fines on offenders.

The object of such a measure is obviously to ensure a more expedient administration of labour law by doing away with unnecessary litigation, particularly when the offence is of a minor character. Whether the experiment has been successful or not can only be inferred from the number of countries which still maintain such a provision on their statute-books.

Actually there are only about a dozen countries which give such quasi-judicial powers to the inspectors or to the higher administrative authorities. Most of these countries

only give the inspectors authority to impose fines directly on offenders when the offence is of trivial importance and the fine stipulated in the labour law is small. In other cases the same law which gives the inspectors this power also fixes the maximum fine which he may impose. There is, it seems, only one country (Yugoslavia) where the regional inspector may also sentence to imprisonment (for not more than three months) the head of an undertaking who is found guilty of a second offence.

In three South American countries illustrations may be found of the case in which the higher administrative authorities are also given such powers.

Since statistics are wanting to show what results have been obtained in the countries which have adopted the principle of the infliction of penalties by administrative procedure, and considering also the limited scope of the laws as well as the relatively small number of countries which at present resort to the measure, it would seem logical to conclude that the question is not one which could properly be dealt with by international agreement either in the form of a Convention or of a Recommendation.

#### THE INSPECTOR'S RIGHT TO BRING BREACHES OF THE LAWS DIRECTLY BEFORE THE JUDICIAL AUTHORITIES

More usually, when legal action is required to enforce sanctions against an offender, the higher administrative authorities assume responsibility for initiating the proceedings upon the inspector's report of the infraction and on the evidence which he may be able to collect.

Certain countries, however, have endeavoured to render prosecutions more expedient by authorising the inspector to bring the culprit directly before the courts, thus avoiding all delays which may be occasioned by unnecessary administrative formalities.

Such a method of procedure inevitably raises certain questions of principle which are inseparable from the general principles at the basis of the legal conceptions of a people. To allow the inspector to report directly to the judicial authorities such breaches of the law as he may have discovered, or to authorise him to act as prosecutor and start legal proceedings on his own initiative, implies special attribu-



tions which many countries would not confer unreservedly upon all members of the labour inspectorate

The solution of the problem thus set may best be deduced from the known laws on the subject in the various countries

In some cases the authority granted to the inspector in this connection is limited to the right to report infractions of the law directly to the judicial authorities, which assume responsibility for the action to be taken at the instigation of the inspector. What authority is attached to the inspector's recommendations is not always to be inferred clearly from the text of the law. Probably hardly more than half a dozen countries resort to this procedure

In other countries the inspector is authorised to start prosecutions directly in his own name or in the name of the State or in the name of a particular department of State. He may in some cases require the permission of the higher authorities. Whether the obtaining of the permission can be considered as a mere formality or as a necessary condition for the institution of proceedings is again a matter which cannot be clearly inferred from the text of the law

In fact, much of the procedure in cases of this nature is governed by rules which have been derived from practice. In any event the number of countries which in one form or another authorise inspectors directly to institute legal proceedings against offenders is relatively small

Since the right to bring the offender directly before the courts of law raises questions of principle which strike at the root of the legal conceptions prevailing in the various countries, and since the relatively small number of countries which resort to this method of procedure do not in practice show any real uniformity in the mode of application of the principles, it would seem impracticable to recommend the matter for regulation by an international Convention. It is better suited for an international Recommendation and figures very appropriately in the Recommendation adopted by the Conference in 1923, which prescribes in Paragraph 5

"That, regard being had to the administrative and judicial systems of each country, and subject to such reference to superior authority as may be considered necessary, inspectors should be empowered to bring breaches of the laws, which they ascertain, directly before the competent judicial authorities "

## THE INSTITUTION OF PROCEEDINGS BY THIRD PARTIES

When the enforcement of sanctions for the violation of social laws is not ensured by administrative procedure or by prosecutions instituted either by the inspector or by the competent authorities, or again by the party immediately aggrieved, then the only remaining alternative would be for third parties such as trade organisations to take the initiative. In fact, trade organisations, apart from their general interest in the enforcement of recognised conditions of work, are sometimes legally affected by violations of conditions of work in so far as those conditions have been determined by collective agreements which are binding between the organisations which are parties to the agreements, and in certain cases are made binding by law on organisations which are not parties to the agreements.

Whether the problem is one which has been successfully solved is a matter which can only be appraised in the light of the various national laws on the subject. It is indeed a subject which has its roots deep in the judicial system of each country and is bound to be affected by the legal conceptions at the basis of the political organisation of each State.

On the whole very few countries have legislated on the rights of third parties (whether they be trade unions, employers' associations, bodies corporate or private individuals) to appear before the courts to secure the enforcement of labour legislation. Such enactments as may exist are generally to be found in this or that particular labour law. Of the few countries which have thus legislated, one half favours the intervention of trade organisations before the courts, whereas the other half excludes them.

The majority of the countries in fact have not adopted any special laws on the subject. They have for the most part left it to judicial interpretation in accordance with the general principles which have the force of law under the different constitutions. The result is that in practice the right of trade organisations is recognised in about half of those countries and is denied in the other half. And even in the countries where it is recognised it is seldom exercised. The reason must be that the trade organisations, in order to secure enforcement of sanctions for infractions of recognised con-

ditions of work, have in practice found it more expedient to exert pressure on the political machinery of government or else to appeal directly to the authorities which are specifically competent and whose duty it is to supervise the administration of labour laws

Since the intervention of third parties before the courts raises questions of principle which are entirely dependent upon the legal conceptions at the basis of the different judicial institutions of the various countries, and since exceedingly few countries have adopted special laws on the subject, some countries legislating against, and others in favour of, the principle, it would seem that the whole matter is not sufficiently ripe for adjustment by international agreement, either in the form of a Convention or of a Recommendation

#### LEGAL PRESUMPTION IN FAVOUR OF THE INSPECTOR'S REPORT

When legal proceedings have to be taken for the enforcement of law, the success of the action may depend to some extent on the rule of evidence adopted with regard to the burden of proof of the inspector's allegations. This is particularly the case where insufficient proofs are adduced one way or the other and the condemnation or acquittal must rest on the legal presumption which is accepted either in favour of or against the statements contained in the inspector's report

Generally the party who makes a statement before a court of law must prove such a statement to the satisfaction of the court, if any weight is to be attached to the allegation. It is only by way of exception that a party who alleges a certain state of facts is deemed to represent the truth until the contrary is shown

It is therefore a question of making the administration of labour law more effective by adopting the rule that in view of the competence and integrity attributed to inspectors, the statements which they include in their reports will be deemed to establish the facts in default of proof to the contrary, thereby shifting the burden of proof to the accused, who would have to produce evidence to show his innocence.

Several countries have embodied in their labour legislation the principle of the legal presumption in favour of the inspector's report — in fact the majority of the countries, in regard to which information is available, appears to have

accepted this rule of evidence. But there are also some countries where the law specifies that the inspector's evidence carries the same weight as that of the defendant

It would be difficult to recommend the inclusion in a Convention of the principle that the inspector's report established the truth of the facts for the reason that a few countries have not yet accepted any specific laws on the subject, and continue to rely on the general rules of evidence which apply to other disputes before the courts and require that proof be adduced in support of allegations made. To ask of those few countries to abandon the position they have taken in the past would be equivalent to asking them to renounce some of their oldest legal conceptions.

The principle involved is, however, most suitable for inclusion in a Recommendation and there are no grounds for believing that the situation has so changed recently that it would be better formulated than it was in the 1923 Recommendation, which stipulates in paragraph 5 (second clause)

“ In countries where it is not incompatible with their system and principles of law, the reports drawn up by the inspectors shall be considered to establish the facts stated therein in default of proof to the contrary ”

#### THE NEED FOR ADEQUATE PENALTIES

The administration of labour law, like the application of any other law, depends for its effectiveness in the long run on the question whether or not appropriate penalties are provided as a punishment to be inflicted upon the law-breaker. The best organised inspection service will ultimately fail, at least in part, when no form of sanction has been provided against the recalcitrant. The repeated suggestions or orders of the inspector will produce scanty results when it is known that an offence can be repeated with impunity.

It is generally with a view to the infliction of definite penalties that prosecutions are begun against those who are accused of infringing one or more of the numerous labour laws. The whole purpose of the institution of legal proceedings would be frustrated if a condemnation by the tribunals were not to be followed by the imposition of penalties in accordance with the gravity of the offence.

In fact one might go so far as to say that even the provision for adequate penalties will not be sufficient if the tribunals abuse their discretion by imposing the minimum fine allowed by law, in cases where a larger or even the maximum fine would be appropriate. But the latter point concerns the discretion of the judiciary and cannot be raised here.

Most countries have adopted the policy of fixing the penalties which may be inflicted upon the party who is found guilty of a breach of any labour law. The legislation nearly always specifies a minimum and a maximum fine. Apart from the discretion left to the judicial authority to impose any fine varying between the minimum and maximum amount allowed, there remains the possibility that the minimum fine which may be inflicted is not sufficient to deter the offender from repeating the offence. That is a complaint which may be found even in the most progressive countries. It happens less often that the maximum fine is considered excessive, the object of the legislator being merely as a rule to provide a deterrent against the recurrence of the offence rather than to create a source of revenue.

Since the principle of the necessity of adequate penalties for breaches of the law is generally recognised, as evidenced by the numerous provisions to that effect in labour legislation, it should be possible to embody that principle in a clause which could take its place in a Convention on labour inspection, binding all the ratifying States to similar obligations arising out of the Convention. It may not be easy to find the appropriate form of wording, but it should not be impossible to do so.

While no clause can be inserted in a Convention on labour inspection which will create the specific obligation for the ratifying States to impose this or that particular penalty for this or that definite offence, the principle could at least be recognised that national laws dealing with labour matters and creating certain obligations should prescribe adequate penalties to be inflicted in case of contravention. Thus the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32), stipulates in Article 17 (2) that "provision shall be made for . . . penalties for breaches of the regulations".

It would seem desirable, therefore, to include in the proposed Draft Convention some clause to the effect that

provision shall be made for the infliction of adequate penalties for breaches of the laws and regulations which the inspectors have to enforce

### THE RIGHT OF APPEAL

Questions of appeals relating to inspection matters are governed on the whole by the same principles as apply to appeals against decisions on other subjects rendered by administrative or judicial authorities, which means that the decisions of inspecting officials or of inferior courts are as a rule subject to appeal in one form or another

Appeals may be initiated either by inspectors or by higher administrative authorities as well as by offenders, according to the nature of the case. But in so far as such appeals follow the regular procedure laid down by law or by judicial practice in all matters, no special problem arises, inasmuch as the judicial institutions of each country are especially adapted to local requirements. It is only when special powers are created under a system of inspection that the question can arise whether special appeals should not also be allowed. Thus is raised the question of the offender's right to appeal against such decisions of the inspector as may have the force of law. The answer to that question could not be considered in a more practical way than by looking at the special legislative measures on the subject.

In a few countries the law authorises the employer or any person concerned to appeal to the higher administrative authorities against adverse decisions of the inspector or the chief inspector. But in each of those countries the law envisages quite different situations arising out of the particular forms of government or other local conditions.

In some cases, for instance, the appeal is aimed at the repeal of the inspector's decision to inflict penalties directly upon an offender, that is, where such a power has been granted.

In other cases the appeal is lodged by the employer before the higher authorities in protest against the manner in which the inspector has exercised his discretionary powers, particularly in connection with his right to issue orders concerning the measures to be taken for the health and security of the workers in the plant.

Again, in other countries the employer has a right of appeal not only to the higher administrative authorities but to the courts of law. His appeal may be directed against the decisions taken by the inspector or the higher administrative authorities, although instances of the latter type are rare. It goes without saying that an accused usually has the right to appeal to a higher court against a decision rendered by a lower tribunal, provided the different conditions governing appeals in the various countries are complied with. It need hardly be recalled that those conditions generally vary from country to country with the diverse judicial systems.

Two of the countries (Germany and Poland) which authorise the inspector to inflict penalties directly upon persons found guilty of certain minor offences also grant the aggrieved party the right to appeal to the competent court of law against the inspector's decision to inflict a penalty.

While some countries, as was observed above, allow the employer to appeal to the higher authorities against orders issued by the inspector in virtue of his discretionary powers, other countries authorise him in certain cases to appeal to the courts of law against such orders, in so far as those orders would otherwise acquire the force of law and consequently would render the employer liable to certain penalties for non-compliance with them. But according to the information which is available there appear to be only very few countries which grant such a right.

In short, the question of appeals in regard to labour inspection matters appears to be very closely linked with questions of appeals in other fields under the different legal systems of the various countries. Furthermore, whenever special laws have been passed on the subject, they have purported to deal with situations which are far from being common to any large number of countries.

No proposals, therefore, are submitted on this point for inclusion in either a Convention or a Recommendation.

### **§ 10. — Obligations of Labour Inspectors**

If they are to secure the confidence of all concerned, the officials of the labour inspection service must possess considerable strength of character in addition to their intellectual

and technical ability. Governments naturally take account of this necessity, not only when selecting candidates but also subsequently in the exercise of their disciplinary supervision over the inspectors. But no Government can dispense with certain legal weapons to prevent abuses and repress them if they occur.

It has been seen that in the majority of countries the labour inspectors have certain obligations imposed on them, either by the general legislation concerning civil servants or by administrative measures or ministerial instructions or circulars, or sometimes by special legislative provisions applying to them alone.

All that will be considered here is the case of special legislative provisions governing inspectors alone, and, more particularly, two sets of rules — those intended to secure impartiality and independence for the inspectors and those guaranteeing professional secrecy. The purpose of this section is to determine the practical conclusions that can be drawn from a study of those provisions.

#### GUARANTEES OF IMPARTIALITY AND INDEPENDENCE

The legislative authorities endeavour to ensure the impartiality and independence of the inspectors by two methods: on the one hand by making them take an oath of impartiality when taking up their duties and, on the other hand, by prohibiting certain activities which are declared to be incompatible with the inspection service.

##### *Oath of Impartiality*

The first method is usually applied to all public officials, and its form varies from country to country according to legislation, custom and tradition. The point is therefore not one that could be incorporated in an international Convention dealing exclusively and specifically with labour inspection.

##### *Incompatibility*

A distinction was drawn between two cases of incompatibility. incompatibility between the duties of an inspector and the exercise of an industrial or commercial occupation,



and incompatibility between the duties of an inspector and the exercise of certain other public functions

There are only a few countries in which there is a special rule prohibiting inspectors from holding certain specified public offices. In any case those are usually general rules governing all public servants, so that the question is merely one special aspect of the general problem of the obligations of civil servants.

As the purpose of the proposed international regulations is not to set up a model code of rules governing labour inspectors but simply to determine the general principles for the working of inspection services, it does not seem desirable to include this point in the draft text of the Convention.

The position is different with regard to the rule prohibiting inspectors from engaging in certain industrial or commercial activities. It is important to ensure that the inspectors are not deterred from conscientiously fulfilling their duties by any subsidiary activities and that there is no conflict between the conscientious fulfilment of his duty and the interest which the inspector may have in some establishment placed under his supervision.

This problem has been dealt with in a certain number of countries. In some cases the inspectors are prohibited from engaging in any industrial or commercial activity, whereas in others the restriction is limited to establishments for the inspection of which they are responsible. It should also be noted that some countries do not have special provisions applying to labour inspectors but general rules applying to all civil servants and administrative measures adopted in virtue of those rules.

This problem is so important that it could scarcely be ignored in international regulations concerning labour inspection. Paragraph 11 of the Recommendation of 1923 prescribed that labour inspectors should have no interest in any establishment placed under their inspection. The Office therefore proposes the insertion of a clause to this effect in the text of any future Draft Convention.

#### PROFESSIONAL SECRECY

The obligation to observe professional secrecy is particularly important for the good working of the labour inspection service, because the inspectors must enjoy the full confidence

of all concerned. Most laws prescribe two obligations, the first concerning secrecy as to facts coming to the knowledge of the inspectors and the other concerning secrecy as to the source of the inspector's information.

*Professional Secrecy as regards Facts*

It was pointed out that in the great majority of countries the labour inspectors are expressly required to observe secrecy as to facts coming to their knowledge in the course of their work. Consequently, any international regulations on inspection should contain a clause on this point. It was already laid down in paragraph 4 of the 1923 Recommendation that inspectors should be bound by oath, or by any method which conformed with the administrative practice or customs in each country, not to disclose, on pain of legal penalties or suitable disciplinary measures, manufacturing secrets and working processes in general which might come to their knowledge in the course of their duties.

It would seem that this principle should be laid down in the proposed international Convention, but it should be noted that whereas there is practical unanimity on the principle, the national laws vary on several points, quite apart from the differences of form that exist with regard to the method of securing secrecy (taking of an oath, etc.).

In some countries the legislation refers only to manufacturing and commercial secrets and working processes in general, whereas in other countries the inspectors are required to observe secrecy on *all* matters observed in the undertakings they supervise. In the former cases the obligation imposed on the inspector is very often absolute, whereas in the latter case it is only partial, because inspectors may, at the same time, be required to report on any facts that come to their notice for the purpose of prosecution.

Subject to this reservation, it will be found that the great majority of laws agree upon the necessity for guaranteeing discretion as to manufacturing and commercial secrets and working processes in general. Consequently there would seem to be sufficient support in national legislation to justify including an obligation of this kind in the future Draft Convention. It may be added that the guarantee of secrecy is merely an essential corollary to the extensive powers of supervision which inspectors enjoy. It should also be indicated

that the obligation to observe professional secrecy should continue even after the official has left the service

On the other hand, it would be well to leave national legislation free to prescribe such exceptions as might be necessary for the good working of the service

The obligation might be worded in the following manner inspectors shall be bound, on pain of appropriate penalties or disciplinary measures, not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes in general which may come to their knowledge in the course of their duties, provided always that States may prescribe such exceptions as are required by the exigencies of the service

#### *Secrecy as to Sources of Information*

The necessity for constant collaboration by all concerned with the labour inspectorate has been emphasised in the course of this Report. It is the right, and indeed the duty, of the parties concerned to give the inspectors information and it is particularly important that the workers should have the right to address a complaint directly to the supervisory officials. If the workers are to exercise this right freely there must be no risk of their being exposed to reprisals. For this reason many laws prescribe that the labour inspectors must not reveal the names of persons who supply information or lodge complaints and it is sometimes even stipulated that the inspector must not inform the employer that his visit is the result of a complaint.

It was laid down in paragraph 19 of the 1923 Recommendation that complaints should be treated as absolutely confidential by the inspectors and even that no intimation should be given to the employer or his officials that a visit made for the purpose of investigation was being made in consequence of the receipt of a complaint.

Moreover, the general principles governing public services as a whole imply the necessity for civil servants to observe professional secrecy on all matters connected with the service, including information, complaints, etc. The Office therefore proposes that the clause cited above from the 1923 Recommendation might be borne in mind with a view to its insertion in any Draft Convention to be adopted.

## § 11 — Co-operation of Employers and Workers with the Labour Inspectorate

### DESIRABILITY OF CO-OPERATION

It has been pointed out on several occasions above that if the labour inspectors are to carry out their duties with complete success, they must be able to count on the support of the employers and workers. It is not sufficient merely to say that no obstacles should be placed in their way, they must have active assistance.

Moreover, it is certainly valuable for the inspectors to profit by the practical knowledge of those who are directly concerned in production. Heads of undertakings and workers will also have greater confidence in the work of the inspectorate if they can feel that they are not merely the subjects of inspection but are taking an active share in the work. It is therefore important that an opportunity should be given to those concerned to express their opinion, make suggestions, or even take an active part in certain aspects of the work of inspection.

The utility of such co-operation is being increasingly recognised and it is now making itself felt in every different branch of the inspectors' activities.

### METHODS OF CO-OPERATION

Co-operation between employers and workers and the labour inspectorate may take two forms: the parties concerned may collaborate with the inspectors, or they or their representatives may directly assume certain tasks delegated to them by the inspectorate.

#### *Delegation of Certain Tasks to the Parties concerned*

The question of the delegation of certain tasks to the parties concerned has been considered merely from the point of view of the extent to which the workers, although not forming part of the official inspectorate, may carry out inspection duties. No attention has been paid in this context to the problem of inspectors recruited from among the workers, as that was dealt with in the section concerning staff. It was pointed out that such powers are delegated not to individuals but to their representatives, either through certain joint bodies or directly to representative organisations of workers, whether

public or private, or again to certain special inspection bodies which are attached to the inspectorate but do not form part of it, such as local inspection committees, auxiliary or voluntary inspectors, etc

The duties of these delegates are sometimes similar to those of inspectors and sometimes restricted to certain questions, such as wages or safety conditions. The right to use compulsion is frequently reserved for the inspectors themselves.

It will thus be seen that the methods of regulating this question vary appreciably. Moreover, there are only a few countries in which the question has been regulated at all. Important as the matter may be, therefore, it must be admitted that it does not appear to be ripe for international treatment.

#### *Association of the Parties in the Work of Inspection*

It was also pointed out above that the employers and workers co-operated in the administration of labour legislation, more particularly through the advisory activities of their trade associations, and that they also participated in supervising the enforcement of such legislation and in the prevention of accidents and occupational diseases.

#### *Collaboration in Administrative Activities*

This collaboration is mainly in the form of the consultation of the parties in advance in certain cases in which exceptions to the provisions of labour legislation may be granted by the labour inspectors. This is particularly the case when permits are given for overtime, night work, Sunday work or work on public holidays.

The question of such collaboration of industrial organisations with the labour inspectorate in the administration of labour legislation is undoubtedly of considerable practical importance, but it can hardly be dealt with in the proposed international regulations, because the methods of this collaboration are determined essentially by the various laws of each country.

#### *Collaboration in Supervising the Enforcement of Labour Laws and in the Prevention of Accidents and Occupational Diseases*

It is only natural that the parties concerned or their representatives should co-operate with the inspectorate in this field. The various problems of accident prevention

provide numerous opportunities for appealing to those who are directly interested in safety and have to use the safety appliances placed at their disposal

This collaboration is in some cases merely a matter of practice, while in others the law itself provides for it, it may be occasional or it may be systematic and continuous. In some countries it is a matter for individual employers and workers, whereas in others it is for their representatives, such as staff delegates or delegates of the trade unions or of certain public bodies. Again, it may result either from direct co-operation of the parties concerned or their representatives, or from the activities of joint bodies.

The principle, then, is recognised in the majority of countries, but the means of applying it vary. It should be pointed out, however, that there is a tendency towards the organisation of conferences and the institution of committees for discussing questions concerning the enforcement of labour legislation and questions of hygiene and safety. In the special field of the prevention of accidents and occupational diseases it is being increasingly recognised that staff delegates and safety committees render valuable assistance to the inspectors when they visit undertakings, make investigations or carry out enquiries into industrial accidents and occupational diseases.

In the Labour Inspection Recommendation, 1923 (No. 20), the Conference expressed the view that the inspectorate should confer from time to time with representatives of the employers' and workers' organisations upon the best measures to be taken for securing the co-operation of the employers and workers and their respective organisations in improving conditions of health and safety.

With regard to accident prevention in particular, the Prevention of Industrial Accidents Recommendation, 1929 (No. 31), devoted the following paragraphs to the question of the collaboration of employers and workers:

"6 In view of the satisfactory results which experience in different countries has shown to follow from co-operation between all parties interested in the prevention of industrial accidents, particularly between employers and workers, it is important that the Members should do all in their power to develop and encourage such co-operation, as recommended in the Recommendation on systems of inspection adopted in 1923.

" 7 It is recommended that in every industry or branch of industry, so far as circumstances require, periodical conferences should be held between the State inspection service, or other competent bodies, and the representative organisations of employers and workers concerned (a) to consider and review the position in the industry as regards the incidence and gravity of accidents, the working and effectiveness of the measures laid down by law, or agreed upon between the State or other competent bodies and representatives of the industry, or tried by individual employers, and (b) to discuss proposals for further improvement

" 8 It is further recommended that the Members should actively and continuously encourage (b) co-operation in the promotion of safety between the management and the workers in individual works, and of employers' and workers' organisations in the industry with each other and with the State and with other appropriate bodies by such methods and arrangements as may appear best adapted to the national conditions and aptitudes. The following methods are suggested as examples for consideration by those concerned: appointment of a safety supervisor for the works, establishment of works safety committees

. . . . .

" 21 Statutory or administrative provision should be made enabling the workers to collaborate in securing the observance of the safety regulations by the methods best suited to each country, for example, the appointment of qualified workers to positions in the official inspection service, regulations authorising the workers to call for a visit from an official of the inspection service or other competent body when they consider such a course desirable, or requiring the employer to give workers or their representatives an opportunity of seeing the inspector when he is visiting the undertaking, inclusion of workers' representatives in safety committees for securing the enforcement of the regulations and establishing the causes of accidents "

The Co-operation in Accident Prevention (Building) Recommendation, 1937 (No 55), emphasised the desirability of direct collaboration between the competent inspector, the employer and the representatives of the persons employed in the undertaking in the form and within the limits fixed by the inspection authority. It expressed the view that safety propaganda in the building industry would be more effective if there were constant co-operation between the inspection authority and all the organisations concerned, including trade unions and employers' associations, and suggested that periodical meetings for examining jointly the methods of improving accident prevention in the building industry should be held by representatives of the organisations mentioned.

The two Regional Conferences of Representatives of Labour Inspection Services held respectively at The Hague in 1935 and Vienna in 1937 both expressed themselves as being in

favour of collaboration between the labour inspectorate, employers and workers

In discussing the passage of the 1923 Recommendation mentioned above, the Hague Conference came to the conclusion that of the various possible methods of collaboration, that of joint committees collaborating with the inspection service in the enforcement of certain laws or regulations was calculated to give satisfactory results, provided that the committees did not encroach in any way on the inspectors' supervisory duties

At Vienna the Conference was unanimous in stressing the satisfactory results obtained by collaboration between the labour inspectors on the one hand and the employers' and workers' organisations on the other

The international bodies which have studied this problem therefore all recognise the utility or even necessity of such co-operation, but the measures they suggest vary very considerably

In view of this variety of form, the question that has to be faced is whether it is possible at the moment to contemplate imposing uniform methods in the international field — whether, that is to say, it would serve any purpose to propose a binding international obligation rather than a Recommendation on the subject

Although the Governments in general are in favour of co-operation between the parties and the inspectorate, it scarcely seems wise to attempt to impose strict obligations. As in 1923, it should suffice to recommend that there be collaboration between the labour inspectorate, the employers and the workers. The experience gained since that date, however, should make it possible to put forward more precise and detailed proposals

If it is agreed that the 1923 Recommendation should be supplemented and made more detailed, the Office would submit the following conclusions to the Preparatory Conference for consideration

(1) *Regular collaboration* — It is not sufficient to recommend that "the inspectorate should confer from time to time with the representatives of the employers' and workers' organisations", what should be recommended is active and regular collaboration between the inspection service and the representatives of the employers and workers, and more particularly occupational organisations



(2) *Means of collaboration.* — In addition, some reference must be made to the means of securing this collaboration. In particular, it would be desirable to recommend the organisation of conferences and the appointment of joint committees or other bodies on which representatives of the associations of employers and workers could discuss with representatives of the inspectorate questions concerning the enforcement of labour legislation and the health and safety of the workers

(3) *Safety delegates or committees* — In order to improve conditions of hygiene and safety in industrial establishments, it would be particularly desirable to recommend the appointment of staff delegates and of safety committees. These delegates, or the members of the committees, should have the right to get into touch with the officials of the inspectorate when they are visiting undertakings or carrying out investigations, more especially into industrial accidents or occupational diseases

### §12.— Methods and Standard of Inspection

The general methods of inspection, the rules for visiting establishments, the degree of development of the various factors for securing the efficiency and frequency of visits are so important for ensuring the effectiveness of the inspection service that they can scarcely be ignored in draft international regulations on labour inspection

It is necessary to consider in the light of national experience what general principles affecting the standard of inspection could be included in a Draft Convention or Recommendation. The general methods of inspection will first be considered and then the problems that arise in connection with the efficiency and frequency of visits

#### METHODS OF INSPECTION

It was pointed out in the part of the Report dealing with this problem that the national authorities, in their endeavour to secure effective supervision over the application of labour legislation, sometimes proceed in accordance with the repressive and sometimes in accordance with the preventive conception of inspection

It was further emphasised that those conceptions were really not conflicting but were generally mutually complementary and that the advantages of the two are often combined in a method whereby the inspectors could use both persuasion and compulsion

1 The *repressive method* means essentially that reliance is placed on repressive measures for the purpose of preventing contraventions. Under this system offenders are prosecuted without any previous warning, so that the work of the inspectorate is organised on lines similar to that of the police authorities

If this method were employed alone it would be likely to create and maintain among employers a state of hostility to labour legislation which would prejudice the enforcement of the law and destroy the harmony of the direct relationships between employers and workers. It is recognised, however, that no satisfactory progress can be made with regard to the protection of the workers by the inspection service unless there is a spirit of collaboration with the employers

2 When the *preventive method* is adopted emphasis is placed on the educational and advisory duties of the inspector, who is required to secure voluntary observance of labour legislation by his own personal influence. He must therefore bring the employer to realise that labour legislation is not a disagreeable obligation arbitrarily imposed but is the best means of securing uniform respect for the more humane labour conditions which are prescribed in the best interests of both parties associated in the production process. If this view is taken of the inspectors' tasks, coercion must not be employed until every effort at persuasion has failed

The exclusive use of the preventive method, however, is also open to criticism. It would scarcely seem possible to ensure complete compliance with labour legislation on a voluntary basis and the fear of repressive measures must remain a necessary factor in securing the faithful application of legislation

The absence of any compulsion, or undue hesitation in taking penal proceedings, prevents the uniform enforcement of the regulations and favours deliberate transgressors at the expense of those employers who faithfully carry out their obligations

In practice, therefore, many countries have adopted systems of inspection which combine the advantages of the two extreme methods briefly outlined above

3 The *mixed method* most frequently employed lays particular stress on the preventive aspect but leaves the way open for severe repressive measures without warning in certain cases, more particularly for more serious offences or offences which are particularly reprehensible because of the concomitant circumstances: obvious intent on the part of the employer, glaring nature of the offence, repeated offences, conspiracy, etc

The question arises whether the general adoption of such a method, which is scarcely open to criticism, could be secured by international regulations and, if so, in what form

It may seem easy for countries using the preventive method to make provision also for prosecution without warning in particularly serious cases, but, on the other hand, it would seem more difficult to induce countries in which the inspector plays the part of policeman to adopt the mixed method

The judicious application of the preventive method, which is at the basis of the mixed method, depends largely on the ability and authority of the inspectors, the degree of education of employers and workers in social matters, the effectiveness with which the employers and workers collaborate in the work of inspection and the possibility of frequent visits

The change from the repressive to the mixed method must therefore be achieved by stages, more particularly as the course of evolution must be governed by certain considerations which vary from country to country, such as the degree of industrialisation, the dispersion of establishments, financial resources, etc

It would therefore seem impossible at present to contemplate the inclusion in a Draft Convention of an obligation for countries to apply the mixed method described above. It should be possible, however, by means of a Recommendation, to invite countries to follow this line of development

#### EFFICIENCY OF INSPECTION

One of the most important problems of labour inspection is that of the efficiency of visits. Visits are the inspectors' most important method of action and consequently an ade-

quate standard of inspection cannot be reached if this aspect of the work is unsatisfactory, for the law will remain a dead letter and the protection afforded to the workers an illusion.

The degree of efficiency of the visits depends on a number of factors, such as the professional ability of the inspector, his authority and independence, the measures taken to facilitate the detection of offences, the degree to which the workers collaborate in the visits, the severity of statutory penalties — all matters which were considered in earlier sections. But another factor which exercises a determining influence on the value of the inspectors' visits is the judicious selection by the inspector of the time of year, day, or hour at which they are made, their unexpectedness, their duration and the standard of education of the employers and workers in matters of labour legislation, hygiene and safety.

It is obvious that visits to seasonal establishments during a slack season are of very little value. It is during periods of full activity, when the workplaces are overcrowded, that there is a risk of transgressing the rules concerning rest periods, and it is particularly at the beginning or end of certain spells of work (depending on the time-table of each establishment) that there is a risk of the daily hours of work being extended beyond the limit permitted by the regulations.

Moreover, if a visit is to be effective, it must be unexpected. There are many infringements that cannot be discovered if notice is given of the visit. This is the case, for example, with regard to offences against the regulations concerning the minimum age for employment, the employment of women and young persons on dangerous or unhealthy work, hours of work, etc.

The time devoted by the inspector to each visit also has an influence on the standard of inspection. Short visits are generally useless. No inspector, however experienced, can in the course of a cursory inspection cover all the points with which he is expected to deal, and moreover, in such a case, his personal educational and preventive influence on the heads of undertakings is practically non-existent.

The degree of education of the workers and their employers with regard to labour legislation, hygiene and safety is also of undoubted importance for securing the efficiency of the inspectors' visits. The value of the advice and recommendations of the inspectors increases in proportion to the degree of

understanding shown by employers and workers, and the latter are often themselves responsible for failure to comply with certain regulations concerning hygiene and safety because they are not aware of the exact scope of the regulations. In addition, a lack of knowledge of the law on the part of the workers is responsible for most of the unfounded complaints which cause the inspectors to waste their time.

The next point to be considered is therefore the conditions to be fulfilled by an inspection service if the rules laid down above as essential to the effectiveness of inspection visits are to be respected.

The inspectors' visits cannot be timely, unexpected and sufficiently long unless he can devote sufficient time to this part of his work and have at his disposal facilities for travel adequate to meet the conditions of his particular area. The time factor is of fundamental importance. Unless establishments are visited so to speak from door to door — in which case the rules as to the most appropriate moment and unexpectedness will have to be neglected — the inspector must travel frequently. Moreover, the actual means of locomotion used by the inspector may destroy the element of surprise and enable offenders to conceal infringements of the law. If the inspector arrives in a rural district by the local bus, there is no possibility of his inspection being unforeseen.

With regard to the education of the employers and workers in the field of labour legislation, hygiene and safety, the means to be employed include lectures, wireless talks and the publication and distribution of practical summaries of the existing legislation (for the full texts of laws are usually of no use to the workers), of explanatory pamphlets on questions of hygiene and safety, "safety first" posters, etc.

It remains to be considered to what extent the principles of the efficiency of inspection as outlined above can be included in the draft text of a Convention or Recommendation.

The question of the time which the inspector should have at his disposal for supervising establishments involves the problem of the size of the inspectorate and the number of subsidiary tasks entrusted to it. The question of means of locomotion raises a financial problem. The solution of those problems envisaged by the Office would involve a considerable increase in the number of inspectors in certain countries or extensive changes in the duties required of them and also an

appreciable increase in the expenditure of inspectors on travelling. This problem is of such importance for the successful enforcement of protective labour legislation that the Office believes that the Conference must consider it with a view to the adoption of an international rule to be laid down in a Draft Convention

As it would doubtless be difficult to obtain acceptance for detailed regulations (apart from the general principle laid down in a previous section that an inspector should not be personally out of pocket on account of travelling expenses incurred in the performance of his duties) because of the practical obstacles that would arise, it must probably suffice to lay down the principle that the number of inspectors, as compared with the number and importance of the tasks entrusted to them, and the material means placed at their disposal should be sufficient to ensure that visits are carried out thoroughly, opportunely and unexpectedly

It does not seem possible to lay down sufficiently binding rules upon the education of employers and workers in matters of labour legislation, hygiene and safety to include them in an international Convention. The Office therefore proposes that the point should be considered with a view to a Recommendation. The countries might be urged to give the fullest possible instruction to employers and workers on protective labour legislation and the more important aspects of industrial hygiene and safety by means of lectures, wireless talks, health and safety exhibitions and the distribution of practical summaries of the legislation, explanatory pamphlets on hygiene and safety, etc.

#### FREQUENCY OF VISITS

The standard of enforcement of labour legislation depends directly not only on the general method of inspection and the degree of efficiency of the visits, but also on their frequency.

If routine visits are not carried out at sufficiently close intervals and if check visits are not made regularly to see that the measures ordered by an inspector are being carried out, or if complaints are investigated only at long and irregular intervals, the work of inspection will be largely ineffective. Moreover, irregularity in the enforcement of labour law creates

inequalities in conditions of production from which the employers who observe the law most strictly are the first to suffer

The need for a certain minimum number of visits in order to ensure an adequate standard of inspection was recognised in the 1923 Recommendation Paragraph 18 laid down certain rules concerning the frequency of visits which countries were urged to respect. It was suggested that every establishment should be visited for the purposes of general inspection not less frequently than once a year, in addition to any special visits that might be necessary for investigating complaints or for other reasons. It was stated that large establishments and those of which the management was unsatisfactory from the point of view of the protection of the health and safety of the workers, and establishments in which dangerous or unhealthy processes were carried on, should be visited much more frequently. When serious irregularities were discovered in an establishment, it should be revisited by the inspector at an early date to ascertain whether the irregularity had been remedied

These rules are, of course, as valid now as they were in 1923, and the question arises whether they could be adopted in the form of a Draft Convention and not merely as a Recommendation

Although in a certain number of countries the rate of frequency of visits satisfies the minimum laid down in the Recommendation, it remains considerably below that minimum in a considerable number of other countries. The main cause of this is said to be the shortage of inspectors as compared with the number and importance of the subsidiary tasks entrusted to them and the inadequacy of their travelling allowances. It follows that if the standard of frequency of visits is to be brought up to the level recommended above, without any decrease in the thoroughness of the visits, extensive administrative changes, involving considerable expenditure, would have to be undertaken by a number of countries

There is therefore reason to fear that the adoption in the form of a Draft Convention of the principles laid down by the 1923 Conference would meet with serious difficulties and it would not seem desirable at the moment to demand such an effort of States

The question then arises of the best form in which to put forward a proposal for ensuring a minimum degree of frequency of visits in the light of the above remarks. The text might, as in 1923, refer to the number of visits to be paid to each establishment, or it might refer to the maximum number of establishments to be placed under the supervision of a single inspector. This latter solution does not seem to the Office desirable. The number of visits that an inspector can make annually with the requisite degree of efficiency depends only to a limited extent on the number of establishments with which he has to deal. It is determined also by the nature and size of the establishments, whether they are scattered or not, and on their working conditions, for that reason the possibility of frequent visits varies considerably from one district to another in the same country, even if the number of establishments to be inspected in each district is the same. In particular, an urban area cannot be compared with a rural district. The differences become even more striking when international comparisons are made. It must also be borne in mind that the inspectors are required to carry out certain subsidiary tasks and certain administrative duties, and that these also vary from country to country.

It has therefore been thought preferable, as in 1923, to lay down a rule based on the minimum number of visits to each establishment, it being left to each country to limit the number of establishments under the control of each inspector, so as to ensure that the rule can be respected. In view of the serious nature of the obligation which States would thus be asked to undertake, the proposals will be limited to visits of routine inspection, in any case, no sufficiently definite rule could be laid down in a Draft Convention with regard to check visits.

The article of the Draft Convention laying down principles in respect of the frequency of visits might be drafted on the following lines:

The number of inspectors, with due regard for the number and extent of the duties required of them and the material means placed at their disposal, should be such as to permit a general inspection to be carried out.

- (a) at least once a year in industrial establishments employing more than five persons, in commercial



establishments employing more than 10 persons, and in all establishments, irrespective of the number of persons employed, using machines that are considered dangerous or in which dangerous or unhealthy processes are carried on ;

(b) at least once every two years in other establishments.

### § 13. — Inspectors' Reports

In the Labour Inspection Recommendation, 1923 (No 20), the International Labour Conference invited States to assume a dual obligation concerning the publication of inspection reports . (1) the obligation for inspectors to submit periodical reports to their central authority dealing with their work and its results , (2) the obligation for the central authority to publish an annual report containing a general survey of the information furnished by the inspectors.

The question arises whether it is possible now to take a further step and to transform the recommendations so strongly made by the Conference in 1923 into formal obligations by means of a Draft Convention

The possibilities of reaching an agreement upon the obligation to submit periodical reports and the further obligation to publish annual general reports will be examined in the light of the study of the law and practice contained in a previous chapter

#### INSPECTORS' PERIODICAL REPORTS

The essential purpose of the periodical reports required of inspectors is to permit the central authority to keep a check on the activities of the inspection services for which it is responsible . But if these reports were a mere matter of internal routine, the International Labour Organisation would naturally not be called upon to make any proposals on the subject

It was pointed out, however, that the periodical reports of labour inspectors possess not only administrative utility but also a very definite social value . It is through these reports that the central authority is in a position to check the progress made in the work of supervision and thus to ensure uniformity in the enforcement of labour legislation throughout the whole country

Moreover, it is on the basis of the information supplied in those periodical reports that the central authority draws up its annual report, which is intended to keep the national and international public informed of the effectiveness of labour legislation in the country. The desirability of dealing with the periodical reports of inspectors in international regulations must therefore be considered from the double point of view of their value as a means of supervising the enforcement of labour legislation and their importance for the survey contained in the annual general report.

The analysis of this problem shows that in every inspection system the inspectors are required, as one of the duties inherent in the nature of their functions, to submit reports on their work to their immediate chiefs at stated intervals; the chiefs in turn have to report periodically to the central authority on the work of the services for which they are responsible. Consequently the inclusion of an obligation of this kind in a Draft Convention would not involve any new commitment for the vast majority of countries.

The question is whether it is possible to do more than lay down the general principle and to prescribe, for example, conditions as to the substance and form of such periodical reports.

A certain uniformity in the method of presentation would doubtless be desirable, not merely in order to facilitate supervision by the central authority, but also, and mainly, to permit it to draw up its annual report on the basis of a uniform plan prepared in advance.

But whereas the obligation to submit periodical reports is laid down in practically every country, the conditions under which the inspection services carry out their duties vary considerably, and these differences affect the frequency of the reports and their substance and form.

With regard to the intervals at which reports are submitted, it has been seen that in different countries the inspectors may be required to report to their immediate chiefs daily, weekly, monthly, quarterly, etc. Similar divergencies exist in the dates at which chiefs of services submit their periodical reports to the central authority. Moreover, the obligations of inspectors in this respect are generally based not on legislation but on administrative instructions.

It is obviously undesirable to make proposals that would be contrary to firmly rooted administrative habits and it would probably be sufficient in the proposed Draft Convention to specify that periodical reports should be submitted by inspectors to the central authority at as frequent intervals as possible and at least once a year

There are also differences in the substance and form of the periodical reports the instructions which may be given by the central authorities concerning the contents of these reports must naturally depend on the provisions of the labour legislation which has to be enforced, and the inspectors must be left a considerable degree of freedom in this matter

In many countries, however, the inspectors are required to submit their reports in accordance with a prescribed plan — that is, they must employ one or more forms provided by the authorities for the purpose

It would certainly be desirable to make this practice a general one and it might be possible to lay down an international rule by way of Convention, provided that every country were left free to determine the actual form in which the inspectors' reports had to be submitted

Summing up, it would seem that the inclusion in the draft text of the Convention of a clause of the kind suggested above, concerning the periodical reports of inspectors, would not encounter any insuperable difficulties. The clause might be to the effect that the inspection services should be required to submit reports on their activities and the results obtained, the reports being drawn up in accordance with a prescribed form and submitted at as frequent intervals as possible, and at least once a year

#### ANNUAL REPORTS

The general annual reports published by the central authority are naturally much more important from the national and international points of view than the periodical reports of the inspectors on which they are based

Nationally speaking, the annual reports enable the public, and more particularly the legislative authorities, to judge whether, and to what extent, the legislation for the protection of workers is really being applied, what points are inadequately

covered by the existing legislation, and how the legislation should be amended in consequence

Internationally speaking, the reports indicate the real standard of labour legislation in the various countries — as distinct from the theoretical standard indicated by the texts of the laws — for this can be discovered only by inspection. The reports further permit those concerned to compare experience and to draw useful conclusions with a view to improving their own methods of enforcement

This brief indication of the utility of the publication of annual reports is probably sufficient to show how desirable it is, from the international point of view, to include a provision on this point in the draft text of the Convention

In assessing the possibilities of securing support for such a proposal in the Conference, it will be necessary to consider three successive problems (1) the obligation to publish annual reports, (2) the publicity given to these reports, (3) the contents of the reports. An attempt may be made, in the light of the solutions adopted in national legislation, to define the obligation which might be laid down in the future Draft Convention

#### *Obligation to Publish Annual Reports*

A survey of national inspection systems shows that in practically every country the authorities, realising the value of annual reports, make it compulsory for the central supervisory body to publish an annual report on the work of the inspection service

In most countries these reports are actually published — although at irregular intervals — either as separate parliamentary documents or in a summarised form in the bulletins or other publications of the Government departments to which the inspection services are attached

On the question of principle, therefore, there would seem to be a sufficient degree of agreement to justify giving the character of a binding international undertaking to the obligation to publish annual reports

#### *Obligation to Disseminate Annual Reports*

It is not sufficient to say that annual reports must be published, if they are to be a source of international information on the progress of the various national laws, everything

possible must be done to ensure their dissemination and utilisation

For this purpose, certain countries translate their national reports into some widely spoken language (English, French, German, Italian, etc.) or at least publish a summary in one of those languages.

For the same purpose, certain countries exchange their annual reports. It may be recalled in this connection that at the second Regional Conference on Labour Inspection at Vienna in 1937 it was proposed that the practice of exchanging annual reports should be extended to every country.

The facts mentioned above clearly reveal the need that is generally felt for giving the widest possible circulation to these reports so that the international public can be made aware of what has been done in the different countries.

Without wishing to discourage in any way the national action taken in this field, it may be suggested that the need would be more fully met if every country undertook to send copies of its annual reports, as soon as published, to the International Labour Office, which in turn would bring them to the notice of the international public, either through its usual publications or in a separate annual volume.

In view of its undoubted practical value, a clause of this kind, requiring States to transmit their annual reports within a reasonable time-limit to the International Labour Office, would doubtless be approved by the Conference.

#### *Contents of Annual Reports*

The next question to be considered is whether it is possible to go further and lay down obligations concerning the contents of annual reports and the form in which they should be presented.

It would certainly be desirable for the reports to be sufficiently uniform in form and substance to make them really comparable internationally. But, at this point, a difficulty is encountered which arises whenever international regulations have to be based on the standards reached in national labour legislation. The substance of the annual reports of the different countries must necessarily depend on the tenor of the national laws and, in view of the very great diversity of these laws and of the conditions in which they have

to be applied in the various countries, it would be useless to propose a standard form suitable for every country

Failing complete uniformity — in favour of which there is in any case little to be said — it might perhaps be possible to reach a certain degree of uniformity, so far at least as the general lines of the reports are concerned

Although the national regulations which have to be enforced by the inspectors differ considerably, there are certain fundamental problems common to every system of inspection and certain tasks common to every form of supervision

When the annual reports of the different countries are considered from this point of view, it will be found that there is considerable uniformity in the manner of presenting the results of the inspectors' activities during the year

Most of the reports, for example, contain information — often in considerable detail — on (1) the organisation of the inspectorate and the composition of the staff, showing the number of officials, their occupational specialisation and their geographical distribution, (2) the scope of inspection as regards the legislation which inspectors have to enforce, special mention being made of any new Acts or regulations which have come into force during the year, (3) the scope of inspection as regards occupations, with details of establishments subject to inspection, classified by main branches of the national economic system and subdivided into the chief industrial groups, (4) the standard of inspection, as shown by the number of visits paid by day and by night, both ordinary and special, in each category of establishment, with notes as to the number of workers employed (classified by age and sex — men, women and juveniles) in the establishments inspected and the number of establishments inspected more than once during the year, (5) results of the repressive activities of the inspectorate, indicating the number and nature of infringements of the Acts and regulations reported to the competent authorities and the number and nature of the penalties imposed

Most of the reports also contain statistics of the number, nature and cause of the industrial accidents and occupational diseases notified in each category of establishment

On all these points, which were already brought out at the 1923 Conference and which are of equal importance to

every country, it would seem possible to reach an agreement as to international regulations

It should be clearly understood that there would be no question of making every country adopt a uniform plan for reports, still less of making them give a uniform shape to the contents of reports drawn up in accordance with such a plan, but simply of requiring the authorities to deal, in their annual reports, with a certain number of questions which all the countries consider of special importance

It is impossible to leave this question of the possible substance of annual reports without at least referring to two proposals put forward at the 1923 Conference

The first of these proposals was that countries should be asked, in their annual reports, to give a special survey of the effect given to International Labour Conventions, whether or not they had been ratified

This proposal was rejected on the grounds that States Members were already required, under the Constitution of the International Labour Organisation, to submit an annual report on the application of the Conventions they had ratified and that it was impossible to ask States to report on the application of Conventions they had not ratified

In point of fact, the general undertaking laid down by the Constitution of the Organisation and the special undertaking which might be prescribed in a Draft Convention on labour inspection would be mutually complementary and not contradictory, for the information on points of fact provided in the inspectors' reports would supplement and corroborate the information concerning the legislation contained in the Governments' reports on the application of Conventions

As this question is none the less a controversial one, it must suffice to draw the attention of the Conference to the problem, which is naturally of very great interest to the International Labour Organisation

The second proposal put forward at the 1923 Conference was that inspection services should be invited, in their annual reports, to deal with one special subject in the field of hygiene and safety, in addition to the subjects normally dealt with in the reports

The Governments which made this proposal thought that the value of the inspectors' annual reports would be considerably increased if they were made to constitute a source

of international information on various matters concerning the health and safety of the workers

This suggestion, which was also rejected by the 1923 Conference, was put forward again in the form of a resolution and was adopted by the International Labour Conference in 1930. The resolution suggested that the more important industrial countries should agree, year by year, on one or two special questions affecting the protection of the workers with which factory inspectors would be required to deal in greater detail in their yearly reports, so that the International Labour Office could co-ordinate and publish the information thus obtained.

The Governing Body, giving effect to this resolution, selected the question of the organisation of safety services in industrial undertakings for 1931, and for 1936 the question of the prevention of accidents in the lumbering industry, as subjects for fuller study in the annual inspection reports.

It would doubtless be difficult, for technical reasons, to include a proposal of this kind in a future Draft Convention or even in a draft Recommendation on labour inspection, but it might be possible to submit a further resolution to the Conference containing concrete suggestions to the Governing Body regarding a series of problems of safety and hygiene that might successively be dealt with in the annual reports of labour inspectors. This would pave the way for international regulations on the particularly complex problems that arise in connection with the health and safety of workers.

It would seem to follow, from this brief survey, that the draft text of the Convention might prescribe not merely the obligation to publish annual reports but also certain rules concerning the contents of these reports. The text might prescribe the following obligations:

Publication by the central inspection authority of an annual report on the work of the inspection services under its control.

Transmission of this report to the International Labour Office as soon as possible, and in any case within twelve months of the end of the year to which the report applies.

The general annual report should contain information on (1) the organisation of labour inspection and the inspecting staff, (2) the scope of inspection as regards the laws to be enforced, with special mention of Acts and regulations brought



into force during the period covered by the report; (3) the scope of inspection as regards occupations, with an indication of the number of establishments liable to inspection in each of the main branches of production industry, commerce and agriculture, (4) the standard of inspection number of visits to each category of establishment, with an indication of the number of workers employed in these establishments, (5) the penalties imposed for infringements of the legislation, with an indication of the number of offences reported and the number of prosecutions and convictions, (6) an indication of the number, nature and cause of industrial accidents and occupational diseases reported to the labour inspectorate

**LIST OF POINTS FOR POSSIBLE ADOPTION  
AS A BASIS OF DISCUSSION BY THE PREPARATORY  
TECHNICAL CONFERENCE**

**I. — DESIRABILITY  
OF INTERNATIONAL REGULATIONS, AND THEIR FORM**

1. Desirability of adopting international regulations on labour inspection, in the form of a Draft Convention.

2. Desirability of preparing separate Draft Conventions for industry and commerce respectively.

3. Desirability of preparing, in addition, one or more Recommendations, on points 16, 18, 26, 27, 28, 29 and 31, below.

**II. — SCOPE OF THE INTERNATIONAL REGULATIONS**

4. Desirability of defining the scope of the proposed international regulations as being, for each country, that laid down in the legal provisions which its labour inspection services have to enforce.

**III. — OBJECT OF LABOUR INSPECTION**

5. Desirability of specifying that the object of labour inspection, for the purposes of the proposed international regulations, is to secure the enforcement of legal provisions relating to the conditions of work and the protection of the workers while engaged in their work.

6. Addition of an illustrative list of subjects covered by the term “ conditions of work and protection of the workers while engaged in their work ”, viz. : hours of work and rest ;

night work ; prohibition of the employment of certain persons on dangerous, unhealthy or physically unsuitable work ; health and safety ; protection of wages ; regulation of wage rates ; etc.

#### **IV. — ORGANISATION OF INSPECTION SERVICES**

7. Necessity of placing each inspection service under the direct and exclusive control of a central authority.

8. Necessity of associating in the work of inspection, for the purposes of enforcing the provisions concerning health and safety, duly qualified technical experts and specialists in medicine, engineering, electricity and chemistry, according to the methods deemed most desirable or appropriate by the national authorities.

9. Desirability of including in a Draft Convention a clause requiring States to take appropriate measures to regulate the co-operation of the inspectorate with other Government services or with public or private institutions engaging in similar inspection work, with a view to preventing overlapping and ensuring uniformity in the activities of all the bodies concerned.

10. Necessity of providing that the inspector should not be required to meet out of his own pocket any travelling expenses necessitated by his duties.

11. Necessity of providing each local inspection service with an office fitted up in accordance with the requirements of the service and open to those concerned at all reasonable hours.

#### **V. — INSPECTING STAFF**

12. Necessity of providing that the members of the inspection service should be recruited solely in the light of their qualifications for the tasks to be entrusted to them.

**13. Necessity of stipulating that the service regulations for the inspectorate should safeguard inspectors against any influence that might interfere with their independence or impartiality and should provide in particular that an inspector, once he has been confirmed in his appointment, should be immune from dismissal except for one of the following reasons :**

- (1) Age limit ;
- (2) Duly proved incompetence ;
- (3) Grave dereliction of duty ;
- (4) Conduct incompatible with his functions ;
- (5) Invalidity ;
- (6) Abolition of post.

**14. Necessity of providing that the inspection staff should include women.**

## **VI. — POWERS OF INSPECTORS**

### **A — SUPERVISORY DUTIES**

**15. Necessity of granting labour inspectors provided with proper credentials the right (formally guaranteed by national legislation) :**

- (a) to enter freely and without previous notice at any hour of the day or night any premises in undertakings where they have reasonable grounds to presume that persons enjoying legal protection are working, and to enter by day any establishments which they have reasonable grounds to presume are liable to inspection ;
- (b) to interrogate, alone or in the presence of witnesses, the employer and the staff of the undertaking on any matters concerning the application of the legislation ;
- (c) to require the production of any books, registers or other documents the keeping of which is prescribed by law, to see that they are in conformity with the statutory provisions, to copy them or to make extracts from them ;

- (d) to enforce the posting of statutory notices ;
- (e) to take and remove for purposes of analysis samples of materials and substances used or handled in the undertaking ;
- (f) in general, to carry out any examination, test or enquiry that they may consider necessary in order to satisfy themselves that the provisions of labour legislation are being strictly observed.

#### B — PREVENTIVE DUTIES

##### *Permits for New Plant*

16. Desirability of recommending that the labour inspectorate should share in the work of checking in advance the plans for new establishments :

- (a) either by expressly granting the labour inspectors — subject to the right of appeal provided in national legislation — power to take decisions as to plans for plant and to refuse permission to proceed with those plans unless the alterations ordered by the labour inspectorate so as to secure the health and safety of the workers are carried out ;
- (b) or by making it compulsory for all plans for new plant to be submitted to the labour inspectorate for its opinion whether the plans are in conformity with the laws and regulations concerning industrial hygiene and safety.

##### *Powers of Regulation after Undertakings have begun Work*

17. Necessity of granting inspection services powers :

- (a) to make orders or have orders made — subject to the right of appeal to a judicial or administrative authority provided by national legislation — requiring such alterations to the installation or plant as may be necessary for securing full and exact compliance with the

laws and regulations relating to the health and safety of the workers to be carried out within a specified time-limit (fixed by the inspector himself) ;

- (b) to take, or cause to be taken, measures with immediate executive force in the event of imminent danger to life and limb.

## VII. — OBLIGATIONS OF EMPLOYERS AND WORKERS

18. Desirability of recommending that every person who proposes to open an industrial or commercial establishment or to make extensive alterations to or take over such an establishment must give notice in advance to the labour inspectorate.

19. Necessity of providing that the requisite measures are taken to ensure that the labour inspectorate is notified of industrial accidents and cases of occupational diseases in such manner as may be determined by national legislation.

## VIII. — PENALTIES FOR OBSTRUCTING INSPECTORS

20. Necessity of stipulating that adequate penalties shall be prescribed in national legislation for obstructing labour inspectors in the performance of their duties.

## IX. — ENFORCEMENT PROCEEDINGS

21. Principle that in the event of deliberate violation of or serious negligence in observing the law, the employer or his representatives shall be proceeded against, without previous warning from the inspector, except in special cases where the law provides that notice shall be given in the first instance to the employer to carry out certain measures.

22. Necessity of providing that adequate penalties may be inflicted for breaches of the laws and regulations which the inspectors have to enforce.

## **X. — OBLIGATIONS OF LABOUR INSPECTORS**

### **A — INCOMPATIBILITY**

**23.** Necessity of stipulating that labour inspectors should have no direct or indirect interest in the establishments under their supervision.

### **B — PROFESSIONAL SECRECY**

**24.** Necessity of stipulating that labour inspectors shall be bound, on pain of legal penalties or suitable disciplinary measures, not to disclose, even after leaving the service, any manufacturing or commercial secrets or working processes in general which may come to their knowledge in the course of their duties, except in cases, specified by national legislation, where the exigencies of the service so require.

**25.** Necessity of stipulating that any complaint submitted to an inspector to bring to his notice a defect or breach of the law must be treated by him as absolutely confidential and that no intimation must be given to the employer or his representatives that a visit of inspection is being made in consequence of the receipt of a complaint.

## **XI. — CO-OPERATION OF EMPLOYERS AND WORKERS WITH THE LABOUR INSPECTORATE**

### **A — REGULAR COLLABORATION**

**26.** Desirability of recommending that the labour inspection service maintain active and regular collaboration with the employers and workers concerned and more particularly with their occupational organisations.

### **B — MEANS OF COLLABORATION**

**27.** Desirability of recommending the organisation of periodical conferences, joint committees and other bodies in which the labour inspectors may discuss with representatives

of the occupational organisations of employers and workers questions concerning the enforcement of labour legislation and the health and safety of the workers.

*C.* — SAFETY DELEGATES OR COMMITTEES

**28.** Desirability of recommending :

- (*a*) that staff delegates in establishments subject to inspection should be enabled to collaborate with the employers, either directly or on safety committees, with a view to improving conditions of hygiene and safety in the establishments ; and
- (*b*) that staff delegates be authorised to get into touch with the officials of the inspection service when they are carrying out investigations in undertakings, and in particular enquiries into industrial accidents or occupational diseases.

**XII. — METHODS AND STANDARD OF INSPECTION**

*A* — GENERAL METHODS OF INSPECTION

**29.** Desirability of recommending the adoption of a system of inspection which, while ensuring the prompt imposition of penalties for deliberate, repeated or concerted offences against labour legislation and for serious cases of negligence in the application of laws and regulations, would, in the case of less serious offences, allow the inspector to exercise his discretion in deciding whether to issue a warning before initiating penal proceedings.

*B* — EFFICIENCY OF INSPECTION

**30.** Desirability of prescribing that the number of inspectors, in proportion to the number and importance of the tasks entrusted to them, and the material means (telephone, means of personal transport, etc.) placed at their disposal must be sufficient to ensure that visits can be carried out under conditions guaranteeing the fullest possible efficiency in the enforcement of labour legislation (visits to be of reasonable duration, timed for the most appropriate moment and period, unforeseen, etc.).



31. Desirability of recommending that the necessary steps be taken to ensure that employers and workers are given the fullest possible instruction in labour legislation and questions of industrial hygiene and safety, more particularly by means of lectures, wireless talks, health and safety exhibitions, the distribution of explanatory pamphlets containing practical summaries of the legislative provisions, etc.

#### C — FREQUENCY OF VISITS

32. Necessity of stipulating :

- (a) that all industrial establishments employing more than five persons or commercial establishments employing more than ten persons, and all establishments, irrespective of the number of persons employed, which use machines deemed to be dangerous or in which dangerous or unhealthy working processes are carried on, should be inspected at least once a year ;
- (b) that all other establishments should be inspected at least every two years.

### XIII. — REPORTS OF THE LABOUR INSPECTORATE

#### A — INSPECTORS' PERIODICAL REPORTS

33. Necessity of providing that labour inspectors should be required to submit reports on the results of their work in supervising the enforcement of labour legislation, the reports being drawn up in a prescribed form and submitted at as frequent intervals as possible, and at least once a year.

#### B — PUBLICATION OF THE ANNUAL REPORTS OF THE CENTRAL AUTHORITY, AND CONTENTS OF THESE REPORTS

34. Necessity of providing that the central inspection authority should publish within a reasonable time, and in any case within 12 months of the end of the year to which it refers, an annual general report on the work of the inspection services under its control.

**35. Necessity of providing that the annual report be transmitted to the International Labour Office within a reasonable period after its publication.**

**36. Necessity of providing that the annual reports should deal, *inter alia*, with the following points :**

- (a) number of inspectors, classified by grade and duties (with special mention of women inspectors) ; geographical distribution of inspection services ;
  - (b) enumeration of the Acts and Regulations subject to supervision by the inspection service, with special mention of Acts and Regulations which have come into force during the period covered by the report ;
  - (c) number of establishments subject to inspection, classified by main branches of production and principal groups of occupations, with an indication of the number of workers employed (men, women, young persons and children) ;
  - (d) number of visits of inspection (by day, by night, ordinary and special) in each category of establishment, with an indication of the number of workers (men, women, young persons and children) employed in the establishments inspected and the number of establishments inspected more than once during the year.
  - (e) number and nature of the infringements of the laws and regulations noted, number of infringements reported to the competent authorities, and number and nature of the penalties inflicted by the competent authorities.
  - (f) statistics of industrial accidents and occupational diseases ; number, nature and cause, by categories of establishments, of accidents and cases of occupational disease notified.
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## CHAPTER II

### **REPORT ADOPTED BY THE PREPARATORY TECHNICAL CONFERENCE ON THE ORGANISATION OF LABOUR INSPECTION IN INDUSTRIAL AND COMMERCIAL UNDERTAKINGS**

*Geneva, May-June 1939*

#### INTRODUCTION

At its Eighty-sixth Session (February 1939) the Governing Body of the International Labour Office decided, in pursuance of a resolution adopted in 1936 by the International Labour Conference, to place on the agenda of the Conference for 1940 the question of the organisation of labour inspection. In anticipation of this decision it had already instructed the Office to convene a Preparatory Technical Conference to consider the following question:

“ The general principles for the organisation of systems of inspection carried out in industrial undertakings (excluding mining and transport undertakings) and commercial undertakings, in order to secure the enforcement of legal provisions relating to conditions of work and the protection of the workers while engaged in their work ”

For the purposes of the Preparatory Technical Conference the Office had prepared a White Report on ‘ The Organisation of Labour Inspection in Industrial and Commercial Undertakings ’. This Report consisted (a) of a comparative international study of the law and practice concerning the organisation of labour inspection in the various countries, (b) of the conclusions which the Office had reached, as a result of its study of the situation in the various countries, with regard to the possibilities of laying down international regulations on the subject, and (c) of a list of points offered as a basis for discussion by the Preparatory Technical Conference.

It was understood that, in accordance with the Standing Orders of the International Labour Conference, the questionnaire to be sent out to the various Governments would be based on the conclusions reached by the Preparatory Technical Conference

The Governments of all the States Members of the International Labour Organisation were invited to send one or more representatives to the Conference. The Governing Body also decided that it would be represented at the Conference by six of its members, two for each group.

The Preparatory Technical Conference on the Organisation of Labour Inspection in Industrial and Commercial Undertakings was held at Geneva at the International Labour Office from 29 May to 2 June 1939.

The following 34 countries sent representatives: Afghanistan, Argentine Republic, Belgium, Bolivia, Brazil, Chile, China, Colombia, Denmark, Egypt, Estonia, Finland, France, British Empire, Hungary, India, 'Iraq, Ireland, Latvia, Lithuania, Luxemburg, Mexico, Netherlands, New Zealand, Norway, Poland, Rumania, Sweden, Switzerland, Union of South Africa, United States of America, Uruguay, Venezuela and Yugoslavia.

The Governments of Portugal and Turkey each sent an observer.

The Governing Body of the International Labour Office was represented by Mr LI PING-HENG (China) and Mr HELIO LOBO (Brazil) for the Government group, Mr H. C. OERSTED (Denmark) and Mr C. TZAUT (Switzerland) for the Employers' group, and Mr C. SCHURCH (Switzerland) and Mr O. HINDAHL (Norway) for the Workers' group.

The total number of representatives of Governments present at the Conference was 51.

The Conference elected as Chairman Mr J. VERVAECK, Director-General for Labour Protection in the Ministry of Labour and Social Welfare (Belgium), and as its Vice-Chairman Mr W. D. NORVAL, Under-Secretary for Labour (South Africa).

The officers of the Conference consisted of the Chairman, the Vice-Chairman and the representatives of the Governing Body.

The Conference also appointed a Drafting Committee composed as follows:

Mrs BEYER (U S A ) ,	Mr PRESTIGE (British Empire) ,
Mr DREYER (Denmark) ,	Mr RAMIREZ MAC'GREGOR (Venezuela) ,
Mr PERRIN (France) ,	Mr VISKI (Hungary) ,
and the Chairman (Mr VERVALCK)	

The Conference agreed to adopt the Standing Orders prepared by the International Labour Office (which were similar to those previously adopted for other preparatory technical conferences)

The Conference agreed to take as a basis for its discussions the list of points submitted to it in the White Report by the International Labour Office (The Office's explanatory commentary on this list of points will be found in the Conclusions of the White Report)

### *EXAMINATION OF THE LIST OF POINTS*

#### **I. — Desirability of International Regulations and their Form**

1 Desirability of adopting international regulations on labour inspection, in the form of a Draft Convention

The Conference agreed that, a detailed Recommendation "concerning the general principles for the organisation of systems of inspection to secure enforcement of the laws and regulations for the protection of the workers" having been adopted by the International Labour Conference in 1923, and substantial progress having been realised in the organisation of national labour inspection systems since that date — partly as a result of the Recommendation — the time appeared to have come for the adoption of international regulations in the more binding form of a Convention. The Conference accordingly approved the point as drafted by the Office (it being understood that the use of the term "a Draft Convention" in the singular in this context did not imply any expression of opinion as to whether the subject should be dealt with in a single Convention or by means of more than one Convention)

2 Desirability of preparing separate Draft Conventions for industry and commerce respectively

The question referred by the Governing Body to the Preparatory Technical Conference covered inspection carried out *in industrial undertakings and commercial undertakings*. Accordingly, the second point to which the Office had drawn the attention of the Conference was that of the "desirability of preparing separate Draft Conventions for industry and commerce respectively." This point gave rise to an exchange of views in the course of which some representatives drew attention to the advantages that might result from having a single Convention on labour inspection, subject to the possibility of inserting special provisions with regard to inspection carried out in particular categories of undertakings. These representatives stressed the fact that employees in commercial undertakings stand no less in need of a strict application of the laws for their protection than do the workers employed in industrial undertakings, and also drew attention to the administrative advantages involved in centralising labour inspection in a single service or department.

Other representatives, recognising the differences existing as between conditions of employment in industrial and commercial undertakings respectively, saw considerable advantages in having two separate Conventions.

One representative, again, considered that whereas by universal consent the time appeared to have come for the adoption of a Draft Convention on the organisation of inspection in industry, the question of the inspection of commercial undertakings had not yet been sufficiently studied to justify such a step, and that it might therefore be advisable for the International Labour Conference, when it came to deal with the question, to content itself with drafting a Recommendation on the subject of the inspection of commercial undertakings.

The question of the desirability of making the future Convention apply to further categories of economic activity (for instance, agriculture, or all workplaces where persons are employed for hire) was raised by some representatives, but it was explained that such further categories were excluded by the wording of the Agenda, and the matter was not pressed.

In order to allow Governments the greatest possible latitude for the expression of their views on the various possibilities the Conference decided that the point might suitably be drafted in the following manner:

Desirability of preparing

- (a) a single Draft Convention covering both industry and commerce, or
- (b) two separate Draft Conventions for industry and commerce respectively, or
- (c) a Draft Convention for industry and a Recommendation for commerce

3 Desirability of preparing, in addition, one or more Recommendations, on Points 16, 18, 26, 27, 28, 29, and 31, below

The Conference agreed that this question should be decided when the time came to discuss the various points individually

## II. — Scope of the International Regulations

4 Desirability of defining the scope of the proposed international regulations as being, for each country, that laid down in the legal provisions which its labour inspection services have to enforce

For the purpose of defining the scope of the proposed Draft Convention or Conventions in respect of the undertakings to be subject to supervision by inspection systems organised on the lines to be prescribed, two methods were theoretically possible

The method normally followed in drafting international labour Conventions is to fix a uniform scope applicable to all countries. Thus, in the present case, the Draft Convention or Conventions might have laid down that inspection organised in the prescribed manner should be carried out in *all* industrial undertakings or *all* commercial undertakings, or in all industrial or commercial undertakings subject to certain specified exceptions

The Office had thought it necessary to rule out this method in the present case. In the first place, divergencies between the different countries as regards their economic and industrial development and the present scope of their inspection systems are extremely wide. In some countries, the creation of whose inspection systems dates back 50 years or more, the scope of the national inspection services is more or less universal. In other countries, where industrialisation in the modern sense is of comparatively recent date, various important categories of undertakings are at present still exempt from inspection. Moreover, the scope of the protective legislation which the inspectorates have to enforce differs widely from country to country. Consequently, any attempt to fix a uniform scope



in an international Convention would have obliged a large number of countries greatly to extend the scope of their inspection systems and also of their protective labour legislation, and, as various representatives pointed out, it appeared quite impossible to expect the countries concerned to undertake such an obligation in order to ratify the Convention.

The second possibility was to concentrate on the laying down of principles for the organisation of inspection systems, leaving it to the various countries to determine the scope of inspection systems organised in accordance with those principles in accordance with the categories of undertakings actually covered by their existing social legislation. The Office had considered that this was the only practical possibility and had accordingly submitted the draft reproduced above.

The Conference agreed to accept the following text proposed by the Office for the sake of clarity, in substitution for that originally proposed:

Application of the proposed international regulations to such industrial and commercial undertakings as are, under the national law, covered by a system of labour inspection.

### III. — Object of Labour Inspection

5 Desirability of specifying that the object of labour inspection, for the purposes of the proposed international regulations, is to secure the enforcement of legal provisions relating to the conditions of work and the protection of the workers while engaged in their work.

It seems clear that any future Draft Convention on the organisation of labour inspection will need to contain some definition of labour inspection by reference to its object. The Office had accordingly submitted for the consideration of the Preparatory Technical Conference the point reproduced above.

In the course of the exchange of views which took place on this point a number of representatives drew attention to the increasingly important part played by collective agreements and arbitration awards in providing for the protection of the workers, and to the tasks which may arise for a labour inspection service in connection with the enforcement of such agreements and awards. It was pointed out that, while due regard must be paid to the varieties of legal systems obtaining in the different countries with reference to this matter, it

would be regrettable if a form of wording were adopted which might be interpreted as implying that, in the opinion of the Preparatory Technical Conference, a labour inspection service should necessarily be made responsible for the enforcement of legislation only, to the absolute exclusion of legally binding agreements and awards. It was accordingly agreed to substitute in the Office's drafting the term "legally binding provisions" for the term "legal provisions". Subject to this modification the point as drafted by the Office was approved, in the following form:

Desirability of specifying that the object of labour inspection, for the purposes of the proposed international regulations, is to secure the enforcement of legally binding provisions relating to the conditions of work and the protection of the workers while engaged in their work.

6. Addition of an illustrative list of subjects covered by the term "conditions of work and protection of the workers while engaged in their work", viz. hours of work and rest, night work, prohibition of the employment of certain persons on dangerous, unhealthy or physically unsuitable work, health and safety, protection of wages, regulation of wage rates, etc.

The Office had suggested to the Conference that it might be useful to consult Governments upon the desirability of adding to a general description of the object of labour inspection (such as is suggested above under Point 5) an illustrative list of subjects covered by the term "conditions of work and protection of the workers while engaged in their work", and had indicated various items which might possibly figure in such an illustrative list.

In the course of the discussion that took place on this point two tendencies made themselves manifest. On the one hand various representatives suggested the advisability of adding further items to the list. On the other hand some representatives considered that although it was clearly understood that the list, however it might be drafted, was at the present stage merely to be submitted to the Governments for the purpose of eliciting their opinions, Governments might perhaps be unfavourably impressed by the inclusion among the suggested items of subjects with which their own labour inspection services were not called upon to deal. Moreover, it was pointed out that the question of wages inspection was not specifically mentioned in the 1923 Recommendation, that inspection in respect of wage payments involved quite different

methods, and different qualities in the inspectors, from ordinary inspection, and that enforcement could frequently be secured by civil proceedings

It was agreed that in order to emphasise the purely illustrative character of the list a phrase should be inserted making it clear that there was no intention of drawing up the proposed Draft Convention in such a form as to require Governments to extend the competence of their labour inspection services to subjects with which they did not at present have to deal. It was also agreed that Governments would not be asked to approve or disapprove of the items proposed for the illustrative list *en bloc*, but that they would be asked for an opinion as to the desirability or undesirability of including each separate item. Subject to these safeguards it was thought that there would be no objection to submitting to the Governments a list comprising not merely the items suggested by the Office but various other items as well. The point was accordingly approved in the following form

Addition of an illustrative list of subjects covered by the term "conditions of work and protection of the workers while engaged in their work", viz

- hours of work and rest,
- weekly rest days, public holidays and other holidays,
- night work,
- prohibition of the employment of certain persons on dangerous, unhealthy or physically unsuitable work,
- protection of women and juvenile workers,
- health and safety,
- protection of wages,
- regulation of wage rates,
- workers' rights in case of dismissal, etc

(in so far as the enforcement of national provisions on these subjects may be entrusted to the respective labour inspection services)

#### IV. — Organisation of Inspection Services

7   Necessity of placing each inspection service under the direct and exclusive control of a central authority

A discussion took place upon the meaning to be attached to the terms "direct and exclusive control of a central authority"

In the first place, the attention of the Conference was drawn to the position in federal countries where labour inspection lies within the competence of or is delegated to the

Governments of the federated States. It was agreed that the term "central authority" should not be interpreted in such cases as necessarily meaning the federal authority, but that it might also mean the State authority.

Attention was also drawn to certain cases where the authority in question is not a political authority liable to periodical changes.

Thirdly, attention was drawn to the cases which may arise where certain inspection duties (for instance, in connection with the inspection of shops) are delegated by the central authority to local or municipal authorities subject to a central control which may be more or less strict. On the other hand, the disadvantages revealed by experience in various countries of allowing too much independence to local or municipal authorities in inspection matters were stressed.

The Conference concluded its discussion by approving the text proposed by the Office, subject to the observations summarised above.

8. Necessity of associating in the work of inspection, for purposes of enforcing the provisions concerning health and safety, duly qualified technical experts and specialists in medicine, engineering, electricity and chemistry, according to the methods deemed most desirable or appropriate by the national authorities.

It was agreed that the use of the term "specialists" in this point should be interpreted as implying merely that the persons concerned should be specially qualified in respect of the subjects mentioned and not that the "specialists in medicine" should necessarily be medical specialists in the ordinary sense of the term.

A discussion took place in connection with a proposal to insert a new point worded as follows: "Necessity of providing that the inspecting staff should include medical practitioners." In the course of this discussion attention was drawn to the respective advantages of employing medical inspectors as members of the inspection staff and of having recourse to outside consultants. Finally, in view of the divergence of opinion as to the relative advantages of the various possible systems, it was agreed to maintain the proposed text in view of the fact that its wording was sufficiently wide to cover all systems, and it was decided not to recommend the insertion of the proposed new point.

## THE ORGANISATION OF LABOUR INSPECTION

9 Desirability of including in a Draft Convention a clause requiring States to take appropriate measures to regulate the co-operation of the inspectorate with other Government services or with public or private institutions engaging in similar inspection work, with a view to preventing overlapping and ensuring uniformity in the activities of all the bodies concerned

The proposed text was approved without discussion

10 Necessity of providing that the inspector should not be required to meet out of his own pocket any travelling expenses necessitated by his duties

The proposed text was approved without discussion

11 Necessity of providing each local inspection service with an office fitted up in accordance with the requirements of the service and open to those concerned at all reasonable hours

The proposed text was approved without discussion

### V. — Inspecting Staff

12 Necessity of providing that the members of the inspection service should be recruited solely in the light of their qualifications for the tasks to be entrusted to them

A discussion took place as to whether it might not be advisable to mention in the text of this point some of the methods proved by experience to be useful for ensuring a proper standard of qualifications in recruits to an inspection service. Some representatives stressed the importance of a probationary period in this connection. Others drew attention to the advantages of recruitment by means of a competitive examination.

It was, however, agreed that it would be difficult in an international Convention to prescribe the methods by which Governments should carry out the selection and training of their officials. In order to make this point quite clear, it was agreed to add at the end of the proposed text the words ' the means of ascertaining these qualifications being a matter for determination by the national regulations '.

The point was accordingly approved in the following form .

Necessity of providing that the members of the inspection service should be recruited solely in the light of their qualifications for the tasks to be entrusted to them, the means of ascertaining these qualifications being a matter for determination by the national regulations

13 Necessity of stipulating that the service regulations for the inspectorate should safeguard inspectors against any influence that might interfere with their independence or impartiality and should provide in particular that an inspector, once he has been confirmed in his appointment, should be immune from dismissal except for one of the following reasons

- (1) Age limit,
- (2) Duly proved incompetence,
- (3) Grave dereliction of duty,
- (4) Conduct incompatible with his functions,
- (5) Invalidity,
- (6) Abolition of post

There was general agreement among members of the Conference as to the necessity of protecting the independence and impartiality of inspectors, particularly by securing to them stability in the tenure of their employment. Doubts were, however, expressed by various representatives as to the possibility, in view of the wide divergences between the different national systems and practices, of inserting in any international Convention provisions so detailed as those contained in the point as drafted.

In particular, it was pointed out that the list of reasons for which an inspector might justifiably be dismissed did not take account of all the reasons considered as valid in various countries for the dismissal of an inspector. Thus, according to the countries, he might be dismissed for bankruptcy, for active participation in politics, for insubordination, and for using political influence in order to obtain advancement.

Secondly, it was pointed out that there were cases where although inspectors enjoyed the full status of civil servants, and in common with other civil servants enjoyed reasonable security of tenure, nevertheless the appointments of all civil servants alike were subject to review at periodical intervals.

Thirdly, attention was drawn to the difficulties that might arise if any attempt were made to confer upon labour inspectors a status different from that of other civil servants in a particular country.

Fourthly, it was pointed out that there were cases where most responsible inspectors were civil servants in the full sense but certain inspection duties might be devolved upon inspectors not possessing that status — for instance, inspectors appointed by local and municipal authorities.

Fifthly, it was suggested that the drafting of the point appeared to apply only to male inspectors, seeing that in some

countries female inspectors were liable to discharge in case of marriage

It was finally agreed that the Office should prepare and submit for the approval of the Conference a less rigid text taking account of the observations summarised above. The Office accordingly submitted the following alternative text:

Necessity of laying down that the labour inspectors should be given all the requisite guarantees for preserving their independence and impartiality as against any external influences

Provision of such guarantees

- (a) preferably, by giving labour inspectors the benefit of civil service regulations, or
- (b) in countries where labour inspectors do not enjoy the benefit of civil service regulations, by giving them the benefit of special regulations, laying down in particular that an inspector, after establishment in the service, may not be dismissed except on one of the following grounds
  - age limit,
  - expiry of contract of engagement,
  - duly proved incompetence,
  - grave dereliction of duty,
  - conduct incompatible with his functions,
  - invalidity,
  - suppression of post in consequence of reorganisation of the service or reduction in the number of posts, as a result of budgetary economies

In the discussion which took place on this new text, it was proposed that the final words "as a result of budgetary economies" should be deleted in view of the difficulty of restricting Governments to suppressions of posts or service reorganisation solely in the case of budgetary economies. In opposition to this proposal it was pointed out that if the words in question were deleted undue latitude would be allowed to the Governments and the guarantees of security of tenure provided by the new text might in some cases become illusory.

It was decided to effect the proposed deletion and the point was accordingly approved in the following form:

Necessity of laying down that the labour inspectors should be given all the requisite guarantees for preserving their independence and impartiality as against any external influences

Provision of such guarantees

- (a) preferably, by giving labour inspectors the benefit of civil service regulations, or
- (b) in countries where labour inspectors do not enjoy the benefit of civil service regulations, laying down in particular that an inspector, after establishment in the service,

may not be dismissed except on one of the following grounds :  
 age limit ,  
 expiry of contract of engagement ,  
 duly proved incompetence ,  
 grave dereliction of duty ,  
 conduct incompatible with his functions ,  
 invalidity ,  
 suppression of post in consequence of reorganisation of  
 the service or reduction in the number of posts

14 Necessity of providing that the inspection staff should include women

The Conference approved this point without discussion

## VI. — Powers of Inspectors

### A SUPERVISORY DUTIES

15 Necessity of granting labour inspectors provided with proper credentials the right (formally guaranteed by national legislation)

- (a) to enter freely and without previous notice at any hour of the day or night any premises in undertakings where they have reasonable grounds to presume that persons enjoying legal protection are working, and to enter by day any establishments which they have reasonable grounds to presume are liable to inspection ,
- (b) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legislation ,
- (c) to require the production of any books, registers or other documents the keeping of which is prescribed by law, to see that they are in conformity with the statutory provisions, to copy them or to make extracts from them ,
- (d) to enforce the posting of statutory notices ,
- (e) to take or remove for purposes of analysis samples of materials and substances used or handled in the undertaking ,
- (f) in general, to carry out any examination, test or enquiry that they may consider necessary in order to satisfy themselves that the provisions of labour legislation are being strictly observed

This text, and particularly paragraph (a), gave rise to a thorough and lively debate

The discussion related in particular to the question of the meaning to be attributed to the words " the right to enter freely and *without previous notice* any premises in undertakings "

All the representatives who spoke on this subject agreed that only unexpected visits — i.e. visits without previous



notice — would enable the supervision to be properly effected.

Nevertheless, some of the representatives expressed the view that this right was not incompatible with the obligation placed on inspectors under certain national schemes to inform the employer or his representative of their presence. Indeed, though it was agreed that labour inspectors should have the right to enter the various establishments without previous notice, the question nevertheless arose whether they should have the right to enter establishments without informing either the head of the undertaking or his representative when they arrived.

Furthermore, the Labour Inspection Recommendation adopted by the International Labour Conference in 1923 had provided that "before leaving, inspectors should if possible notify the employer or some representative of the employer of their visit."

A large number of representatives expressed their fear that such an obligation would be interpreted as restricting the very principle of free access to establishments without previous notice. The representatives in question agreed that normally the inspector would inform the employer of his presence in the establishment, but considered that it should nevertheless be clearly understood that "notification of presence" should in no case be interpreted to mean "previous warning." Moreover, since this was a question of tact rather than one of principle, it should be left, in each individual case, to the discretion of the labour inspector.

At the Chairman's suggestion, the Office prepared a text embodying a compromise between the different opinions expressed, to the effect that the following new paragraph should be added at the end of Point 15 (a)

"The inspector will as far as possible inform the employer or the employer's representative of his presence in the establishment. Nevertheless, he will not be obliged to do this if he considers that such a notification may be prejudicial to the performance of his inspection duties."

Another question had been raised in connection with the right of free access, without previous notice, to establishments hable to inspection.

Several representatives pointed out that the right of free entry and that of free supervision — which were absolute rights as regards private industry and private commerce —

were nevertheless subject to certain restrictions in connection with visits to establishments manufacturing products used for purposes of national defence

It was pointed out that this question lay within the exclusive competence of Governments and that consequently the right of free access could not apply in the same manner to undertakings working for national defence purposes. Furthermore, under Point 4, the competence of the inspection services only extends to industrial and commercial undertakings which, under national legislation, are subject to a system of labour inspection, and therefore the freedom, which should be vested in each State, to organise a special supervisory system in establishments working for purposes of national defence is fully guaranteed

Lastly, still in connection with Point 15 (a), the Conference decided at the suggestion of several representatives to define the interpretation to be given to the words "any premises in undertakings where they have reasonable grounds to presume that persons enjoying legal protection are working". It was agreed that these words covered both family workshops (if the inspection service was competent to supervise home work) and all the accessory premises of establishments (workers' living quarters, dormitories, canteens, infirmaries, nurseries, works' welfare institutions, etc.)

As regards Point 15 (c), one representative asked whether the word "books" included account books. In order to avoid any doubt in this connection, it was agreed that paragraph (c) should be supplemented by words making it clear that the paragraph referred to "books, registers or other documents the keeping of which is prescribed by laws relating to conditions of work".

There was no objection to the other paragraphs of Point 15.

In view of the amendments made to paragraphs (a) and (c), Point 15 stands redrafted as follows

Necessity of granting labour inspectors provided with proper credentials the right (formally guaranteed by national legislation).

- (a) to enter freely and without previous notice at any hour of the day or night any premises in undertakings where they have reasonable grounds to presume that persons enjoying legal protection are working, and to enter by day any establishments which they have reasonable grounds to presume are liable to inspection, *the inspector will as far as possible inform the employer or the employer's repre-*

*sentative of his presence in the establishment Nevertheless he will not be obliged to do this if he considers that such a notification may be prejudicial to the performance of his inspection duties ,*

- (b) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legislation ,
- (c) to require the production of any books, registers or other documents the keeping of which is prescribed by the laws relating to conditions of work, to see that they are in conformity with the statutory provisions, to copy them or to make extracts from them ,
- (d) to enforce the posting of statutory notices ,
- (e) to take or remove for purposes of analysis samples of materials and substances used or handled in the undertaking ,
- (f) in general, to carry out any examination, test or enquiry that they may consider necessary in order to satisfy themselves that the provisions of labour legislation are being strictly observed

## B — PREVENTIVE DUTIES

16 Desirability of recommending that the labour inspectorate should share in the work of checking in advance the plans for new establishments

- (a) either by expressly granting the labour inspectors — subject to the right of appeal provided in national legislation — power to take decisions as to plans for plant and to refuse permission to proceed with those plans unless the alterations ordered by the labour inspectorate so as to secure the health and safety of the workers are carried out ,
- (b) or by making it compulsory for all plans for new plant to be submitted to the labour inspectorate for its opinion whether the plans are in conformity with the laws and regulations concerning industrial hygiene and safety

The essential subject of discussion was the question of the form of regulation to be chosen — Draft Convention or Recommendation

Several representatives expressed their preference for a Draft Convention, particularly because, once a new establishment is constructed or new plant set up, subsequent instructions of inspectors on the subject would be likely to remain a dead letter

Most of the representatives who took part in this debate nevertheless spoke in favour of regulation by Recommendation, and pointed out more particularly that, at the stage now reached by their respective national legislations, it would be difficult for their Governments to ratify a Draft Conven-

tion including such an obligation. They stated that their national systems were based on the principle of the personal responsibility of employers, it was to be feared that the opinion previously given by the labour inspection service might involve the subsequent responsibility of this service and hinder any attempt by it to improve the conditions of the workers as regards health and safety.

For these reasons the Conference decided in favour of a Recommendation.

As regards the scope of Point 16, one representative expressed the desire to have the inspection service extend its preventive supervision to poisonous chemicals used for the first time, it appeared that it would indeed be necessary to consult the inspection services in advance regarding the method of using these products in order not to encounter subsequently cases involving difficulty with regard to compensation for occupational diseases or industrial accidents.

In order to take account of this desire, the Office proposed to the Conference that, in Point 16 (a), after "power to take decisions as to plans for plant", the words "and processes of production" should be added, since this expression would cover the use of toxic chemicals *inter alia*.

Point 16 provides for two methods of checking: in (a), the procedure of previous authorisation, the inspection service being entitled to take decisions as to plans for new establishments, and in (b), a consultation procedure by means of which the inspectors would be associated in preventive supervision through an obligation placed on the parties concerned to apply for the inspectorate's opinion.

It was agreed that it would be advisable to retain reference to these two methods in the questionnaire to be addressed to Governments, so that the latter might be enabled to choose between them.

Lastly, at the suggestion of one of the representatives, the Conference decided to add a new Point 16 A providing for the obligation to submit to the labour inspection service the plans for dangerous or unhealthy establishments.

As a result of these amendments, Points 16 and 16 A were drafted as follows:

16. Desirability of recommending that the labour inspectorate should share in the work of checking in advance the plans for new establishments.

- (a) either by expressly granting the labour inspectors — subject to the right of appeal provided in national legislation — power to take decisions as to plans for plant *and for processes of production* and to refuse permission to proceed with those plans unless the alterations ordered by the labour inspectorate so as to secure the health and safety of the workers are carried out, or
- (b) by making it compulsory for all plans for new plant *and for processes of production* to be submitted to the labour inspectorate for its opinion whether the plans are in conformity with the laws and regulations concerning industrial hygiene and safety

16 A *Desirability of recommending in any case the adoption of a provision requiring the submission to the labour inspection service of the plans for all dangerous or unhealthy establishments and processes of production*

17 Necessity of granting inspection services powers

- (a) to make orders or have orders made — subject to the right of appeal to a judicial or administrative authority provided by national legislation — requiring such alterations to the installation or plant as may be necessary for securing full and exact compliance with the laws and regulations relating to the health and safety of the workers to be carried out within a specified time limit (fixed by the inspector himself),
- (b) to take, or cause to be taken, measures with immediate executive force in the event of imminent danger to life and limb

Several representatives stated that their countries would be in a position to ratify a Draft Convention containing the provision included in Point 17. Others however explained the difficulties — both of principle and of organisation — which they would inevitably encounter if they attempted to give effect to an obligation formulated in such strict terms. They pointed out more particularly that the labour inspector has not the right to act unless the courts have already taken a decision, which may — it was added — be obtained within a few hours in case of imminent danger.

Another representative said that in view of the constitutional structure of his country it would no doubt be impossible for his Government to introduce legislation giving administrative officials powers hitherto reserved to the judiciary.

The Conference naturally took account of objections so explicitly expressed.

The Office had indeed fully realised the difficulties which this problem would raise and had believed it was meeting them in advance by providing that inspection services should

have the power either to make orders themselves or to *have orders made* — i.e. by the authorities competent under the respective national legislation (Point 17 (a)) and to take themselves, or *cause to be taken* (by the competent national authorities), measures with immediate executive force in the event of imminent danger (Point 17 (b))

Nevertheless, in view of the explanations given to the Conference, it seemed preferable to add to Point 17 a new paragraph based on paragraph 6 of the Labour Inspection Recommendation, 1923, and worded as follows

*If such a procedure would not be in accordance with the administrative or judicial system of the country, the inspectors should apply to the competent authorities for the issue of orders or for the taking of measures with immediate executive force*

## VII. — Obligations of Employers and Workers

18 Desirability of recommending that every person who proposes to open an industrial or commercial establishment or to make extensive alterations to or take over such an establishment must give notice in advance to the labour inspectorate

There was agreement in the Conference on the substance of the problem. One representative, however, expressed the opinion that it would be better to embody the principle in an international Convention, if one were adopted, and not in a Recommendation, but he did not press the proposal. The Conference therefore adopted the draft without amendment.

19 Necessity of providing that the requisite measures are taken to ensure that the labour inspectorate is notified of industrial accidents and cases of occupational diseases in such manner as may be determined by national legislation

The Conference agreed to this point without discussion

## VIII. — Penalties for Obstructing Inspectors

20 Necessity of stipulating that adequate penalties shall be prescribed in national legislation for obstructing labour inspectors in the performance of their duties

This point was adopted without discussion

### IX. — Enforcement Proceedings

21 Principle that in the event of deliberate violation of or serious negligence in observing the law, the employer or his representatives shall be proceeded against, without previous warning from the inspector, except in special cases where the law provides that notice shall be given in the first instance to the employer to carry out certain measures

The Conference agreed to the proposed drafting of this point without discussion, except that one representative emphasised that the text as drafted should not be misinterpreted as tending to deprive inspectors of the discretionary power normally allowed them of giving a warning before taking proceedings in cases of contraventions of relatively slight importance, whilst another representative emphasised that the provisions of the proposed Draft Convention or Conventions on this point should be drawn up in such a way as to allow for varieties of national legal and administrative procedure in dealing with contraventions

22 Necessity of providing that adequate penalties may be inflicted for breaches of the laws and regulations which the inspectors have to enforce

The Conference approved this drafting without discussion

### X. — Obligations of Labour Inspectors

#### A — INCOMPATIBILITY

23 Necessity of stipulating that labour inspectors should have no direct or indirect interest in the establishments under their supervision

The Conference adopted this point without discussion

#### B — PROFESSIONAL SECRECY

24 Necessity of stipulating that labour inspectors shall be bound, on pain of legal penalties or suitable disciplinary measures, not to disclose, even after leaving the service, any manufacturing or commercial secrets or working processes in general which come to their knowledge in the course of their duties, except in cases, specified by national legislation, where the exigencies of the service so require

The Conference adopted this point without discussion.

25 Necessity of stipulating that any complaint submitted to an inspector to bring to his notice a defect or breach of the law must be treated by him as absolutely confidential and that no

intimation must be given to the employer or his representatives that a visit of inspection is being made in consequence of the receipt of a complaint

Several representatives took part in a discussion as to whether the principle stated above should be a general one

One representative asked whether it would not be expedient to provide that the obligation to treat a complaint as confidential should lapse if the complaint were unjustified. Further, it was feared that the phrase "no intimation must be given to the employer or his representatives that a visit of inspection is being made in consequence of the receipt of a complaint" was too rigid. In some cases an inspector might find it expedient to say that he had received a complaint and wished to investigate the matter on the spot.

On the other hand, several representatives argued that if an employer knew a complaint had led to an inspection visit, he would make enquiries among his workers and in the end discover the author of the complaint, who would either be dismissed at once or be noted for dismissal in the near future. In some countries the precautions taken went so far that if an inspection service received a complaint, the inspector sent to visit the establishment in question was not told the name of the author of the complaint.

Doubts were also expressed as to whether the author of a complaint made on the grounds of a specific material claim could achieve his purpose if the complaint were treated as absolutely confidential.

In reply it was stated that a complaint could still be treated as confidential, even if it referred to a specific claim. The inspector could investigate the whole undertaking or a given part of a large undertaking or carry out sample inspections, etc. It would therefore always be possible to achieve the desired result while treating the complaint as confidential.

Since the representatives who had raised these various objections did not press their point, the Conference adopted the Office draft.

## **XI. — Co-operation of Employers and Workers with the Labour Inspectorate**

26 Desirability of recommending that the labour inspection service maintain active and regular collaboration with the employers and workers concerned and more particularly with their occupational organisations



An exchange of views took place on the principle of this point. The opinion was expressed that co-operation between the parties concerned and the labour inspectorate was so natural that there was no point in issuing a recommendation to that effect. Some representatives on the other hand, thought that the words "active and regular collaboration" proposed by the Office were too rigid.

There was, however, a difference of opinion as to how far the principle should go if the wording were made more flexible. Some representatives wished to leave out the words "active and regular" or else to substitute for the original phrase a recommendation that the labour inspectorate should maintain collaboration with the employers and workers concerned according to the needs of each case either at the request of the workers or at that of the employers, or through the occupational organisations.

Some representatives proposed that the words "and regular" alone should be deleted.

The motion to delete the words "active and regular" was defeated, whereas the motion to delete the words "and regular" was carried.

Point 26, as approved by the Conference, therefore read as follows:

Desirability of recommending that the labour inspection service maintain active collaboration with the employers and workers concerned and more particularly with their occupational organisations.

27 Desirability of recommending the organisation of periodical conferences, joint committees and other bodies in which the labour inspectors may discuss with representatives of the occupational organisations of employers and workers questions concerning the enforcement of labour legislation and the health and safety of the workers.

The Conference agreed to this proposal as a whole. Two points however were commented on. Owing to the practical difficulty of organising conferences at regular intervals some representatives asked that periodical conferences should not be recommended. It was also pointed out that the occupational organisations themselves might find regular participation in periodical conferences a burden. On the other hand it was held that even if the conferences were not periodical they should not fall into disuse.

The Conference agreed to delete the word "periodical" while admitting the expediency of holding as frequent conferences as possible

It was further pointed out that the organisation of conferences to be attended by labour inspectors might be difficult if ordinary and local inspectors were to attend and that it would be better to substitute the words "inspection services" for "labour inspectors"

The Conference adopted this proposal

As amended by the Conference, Point 27 read as follows

Desirability of recommending the organisation of conferences, joint committees and other bodies in which delegates of the labour inspection services might discuss with representatives of the occupational organisations of employers and workers questions concerning the enforcement of labour legislation and the health and safety of the workers

28 Desirability of recommending (a) that staff delegates in establishments subject to inspection should be enabled to collaborate with the employers either directly or on safety committees, with a view to improving conditions of hygiene and safety in the establishments, and (b) that staff delegates be authorised to get into touch with the officials of the inspection service when they are carrying out investigations in undertakings, and in particular enquiries into industrial accidents or occupational diseases

The expediency of this suggestion was questioned by one representative who, stressing the difficulties to which the organisation of the workers within an undertaking often gave rise, moved the deletion of Point 28. The Conference, however, was in favour of the Office draft, which was adopted without amendment

## XII. — Methods and Standard of Inspection

### A. — GENERAL METHODS OF INSPECTION

29 Desirability of recommending the adoption of a system of inspection which, while ensuring the prompt imposition of penalties for deliberate, repeated or concerted offences against labour legislation and for serious cases of negligence in the application of laws and regulations, would, in the case of less serious offences, allow the inspector to exercise his discretion in deciding whether to issue a warning before initiating penal proceedings

The above text was adopted without modification

## B — EFFICIENCY OF INSPECTION

30 Desirability of prescribing that the number of inspectors, in proportion to the number and importance of the tasks entrusted to them, and the material means (telephone, means of personal transport, etc ) placed at their disposal, must be sufficient to ensure that visits can be carried out under conditions guaranteeing the fullest possible efficiency in the enforcement of labour legislation (visits to be of reasonable duration, timed for the most appropriate moment and period, unforeseen, etc )

In order to make clear the sense to be attached to the word " tasks " it was felt necessary to insert, after the word in question, an explanatory parenthesis to the following effect " (Number, nature and size of establishments covered by inspection, number and variety of the workers employed in them, and number of subjects with which inspectors have to deal ) '

Among the factors influencing the efficiency of inspection, attention was drawn to the importance of inspectors being adequately supervised and adequately instructed in the performance of their duties. The Conference, while considering that the question of the supervision of inspectors was an administrative matter to be settled by the various countries in accordance with national circumstances, was of opinion that mention should be made in Point 30 of the adequate instruction of inspectors in the performance of their duties.

The text adopted by the Conference accordingly reads as follows

Desirability of prescribing that the number of inspectors, in proportion to the number and importance of the tasks (number, nature and size of establishments covered by inspection, number and variety of the workers employed in them, and number of subjects with which inspectors have to deal) entrusted to them, and the material means (telephone, means of personal transport, etc ) placed at their disposal, must be sufficient to ensure that visits can be carried out under conditions guaranteeing the fullest possible efficiency in the enforcement of labour legislation (visits to be of reasonable duration, timed for the most appropriate moment and period, unforeseen, inspectors to be adequately instructed in the performance of their duties, etc )

31 Desirability of recommending that the necessary steps be taken to ensure that employers and workers are given the fullest possible instruction in labour legislation and questions of industrial hygiene and safety, more particularly by means of lectures, wireless talks, health and safety exhibitions, the distribution of explanatory pamphlets containing practical summaries of the legislative provisions, etc

It was suggested that, since, in practice, instruction in industrial hygiene and safety is given in industrial establishments by foremen and engineers, it would be desirable that when going through their course in technical schools, they should themselves receive instruction in these subjects

The Conference was of opinion that mention should be made of this point

In order to limit the responsibility of Governments with respect to the instruction of employers and workers in labour legislation and industrial hygiene and safety, it was agreed that the words "to ensure that employers and workers are given the fullest possible instruction" should be replaced by the words "to ensure that employers and workers are given instruction as far as possible" in these matters

The text adopted by the Conference therefore runs as follows.

Desirability of recommending that the necessary steps be taken to ensure that employers and workers are given instruction as far as possible in labour legislation and questions of industrial hygiene and safety, more particularly by means of lectures, wireless talks, health and safety exhibitions, the distribution of explanatory pamphlets containing practical summaries of the legislative provisions, by the inclusion of instruction in industrial hygiene and safety in the curriculum of technical schools, etc

### C - FREQUENCY OF VISITS

#### 32 Necessity of stipulating

- (a) that all industrial establishments employing more than five persons or commercial establishments employing more than ten persons, and all establishments, irrespective of the number of persons employed, which use machines deemed to be dangerous or in which dangerous or unhealthy working processes are carried on, should be inspected at least once a year,
- (b) that all other establishments should be inspected at least every two years

The general feeling of the Conference was that, while establishments in which there was a danger to the life or health of the workers should be inspected at least once a year or more often if circumstances so required, it would be impracticable, and indeed unnecessary, that the other types of establishment mentioned should be visited with the degree of frequency proposed. In particular, it was emphasised that

the degree of frequency of inspection could not be made to depend on the size of the establishment. It was often in the small establishments, in which the workers were frequently not organised and therefore in greater need of protection, that more frequent visits were required than in the large establishments. Much more important than the size of the establishment was the employer's record with respect to compliance with the law, the type of work being carried on, etc.

On the other hand the Office preferred that, in view of the importance attached by workers' organisations to the question of frequency of visits of inspection, Governments should be consulted on the points raised in the draft text so that the International Labour Conference in 1940 should have before it the opinions of Governments on those points.

At the request of various members of the Conference, the Office submitted as an additional point, 32 A, a proposal framed in less rigid terms than Point 32. The text of this proposal was as follows:

In the event of the solution contained in Point 32 being considered too rigid, possibility of stipulating

- (a) that all establishments which use machines deemed to be dangerous, or in which dangerous or unhealthy working processes are carried on, should be inspected at least once a year,
- (b) that other establishments should be inspected as often as necessary in order to ensure the effective enforcement of labour legislation.

It was agreed that the terms "dangerous machine" and "dangerous or unhealthy working process" referred not to the machine or process as such but to the machine or process as actually utilised in particular establishments, regard being had to the means of protection employed.

It was also agreed that establishments employing machines or processes which were dangerous should not only be inspected once a year but that there should also be a sufficient number of check visits to ensure that any orders given were actually carried out. With an addition in this sense, Point 32 A was adopted, it being understood that the same addition would be made in Point 32.

At the same time it was felt that, in order to secure clear replies to the consultation of Governments on Point 32 — which consultation was recognised to be necessary — paragraph (a) of Point 32 should be subdivided into three, the first subdivision relating to (a) inspection of industrial establishments employing more than five persons, the second relating to (b) inspection of commercial establishments employing more than ten persons, and the third relating to (c) establishments in which dangerous machines are in use or in which dangerous or unhealthy working processes are carried on.

With regard to industrial establishments employing more than five persons and commercial establishments employing more than ten persons, it was decided that Governments should be consulted as to the necessity of stipulating that such establishments should be inspected at least once a year as far as possible. With regard to establishments employing dangerous machines or processes, it was agreed to maintain the text of the Office.

Paragraph (b) of the original Office draft, which thus became paragraph (d), was adopted without modification.

The text of the two points, as approved by the Conference, is therefore as follows:

32 Necessity of stipulating

- (a) that as far as possible all industrial establishments employing more than five persons should be inspected at least once a year,\*
- (b) that as far as possible all commercial establishments employing more than ten persons should be inspected at least once a year,
- (c) that all establishments, irrespective of the number of persons employed, in which dangerous machines are in use or in which dangerous or unhealthy working processes are carried on should be inspected at least once a year, and more often if necessary,
- (d) that all other establishments should be inspected at least every two years.

32 A In the event of the solution contained in Point 32 (a), (b), (c), (d) being considered too rigid, possibility of stipulating

- (a) that all establishments in which dangerous machines are in use or in which dangerous or unhealthy working processes are carried on should be inspected at least once a year and more often, if necessary,
- (b) that other establishments should be inspected as often as necessary in order to ensure the effective enforcement of labour legislation.

### **XIII. — Reports of the Labour Inspectorate**

#### **A. — INSPECTORS' PERIODICAL REPORTS**

33 Necessity of providing that labour inspectors should be required to submit reports on the results of their work in supervising the enforcement of labour legislation, the reports being drawn up in a prescribed form and submitted at as frequent intervals as possible, and at least once a year

The reports referred to above are not the daily or weekly reports which are prepared by individual inspectors on their current work and submitted to their immediate chiefs. What is contemplated here is the preparation, by the local inspection service or, where no such service exists, by the local inspector in charge of the district, of a report of a general nature covering a certain period of time. These reports would be forwarded periodically to the central inspection authority and would serve as a basis for the preparation of an annual general report by that authority.

In the case of some countries it was pointed out that while it was customary to require inspectors to submit reports on their work daily or at other short intervals they were not required to make general reports covering any considerable period of time. Such general reports would be prepared by the central office on the basis of the daily or other reports of inspectors.

It was agreed to add after the words "labour inspectors" the words "or local inspection services".

One representative indicated that even with this amendment she did not consider that her Government would be in a position to ratify any Draft Convention involving an obligation of the kind contemplated.

The text as adopted by the Conference was as follows:

Necessity of providing that labour inspectors or local inspection services should be required to submit periodical general reports on the results of their work in supervising the enforcement of labour legislation, the reports being drawn up in a prescribed form and submitted at as frequent intervals as possible, and at least once a year.

#### **B — PUBLICATION OF THE ANNUAL REPORTS OF THE CENTRAL AUTHORITY, AND CONTENTS OF THESE REPORTS**

34 Necessity of providing that the central inspection authority should publish within a reasonable time, and in any case within 12 months of the end of the year to which it refers, an annual general report on the work of the inspection services under its control.

35 Necessity of providing that the annual report be transmitted to the International Labour Office within a reasonable period after its publication

Points 34 and 35 were adopted without modification

36 Necessity of providing that the annual reports should deal, *inter alia*, with the following points .

- (a) number of inspectors, classified by grade and duties (with special mention of women inspectors), geographical distribution of inspection services ,
- (b) enumeration of the Acts and Regulations subject to supervision by the inspection service, with special mention of Acts and Regulations which have come into force during the period covered by the report ,
- (c) number of establishments subject to inspection, classified by main branches of production and principal groups of occupations, with an indication of the number of workers employed (men, women, young persons and children) ,
- (d) number of visits of inspection (by day, by night, ordinary and special) in each category of establishment, with an indication of the number of workers (men, women, young persons and children) employed in the establishments inspected and the number of establishments inspected more than once during the year ,
- (e) number and nature of the infringements of the laws and regulations noted, number of infringements reported to the competent authorities, and number and nature of the penalties inflicted by the competent authorities ,
- (f) statistics of industrial accidents and occupational diseases ; number, nature and cause, by categories of establishments, of accidents and cases of occupational diseases notified

Paragraphs (a), (b), (e) and (f) were adopted without modification

With regard to paragraph (b) it was indicated that States which ratified a Draft Convention on the subject would be able to discharge their obligations regarding the enumeration of the Acts and Regulations subject to supervision by the inspection service by giving in their first annual report on the application of the Convention a list of all the Acts and Regulations and giving in their subsequent reports simply a list of additional Acts and Regulations which had come into force during the year covered by the report

Paragraph (c) does not contemplate the provision of any detailed information other than that normally available in the administration It was felt that this should be made clear in the text



On paragraph (d) some discussion took place as to the proposed classification of visits of inspection — by day, by night, ordinary and special. It was considered that it might in practice be difficult to distinguish between special visits and ordinary visits, since on the occasion of a visit made for a special purpose advantage might be taken of the opportunity to carry out also an ordinary visit of a general nature. It was therefore agreed not to maintain the distinction between ordinary and special visits. On the other hand, it was considered desirable to distinguish between visits made by day and visits made by night.

It was felt that the statistical work involved in the classification of workers into four categories — men, women, young persons and children — would be beyond the resources of most inspection services and that the information, when compiled, might not be of great value, since the number of workers of each class might vary fairly considerably from day to day.

It was decided to delete the provision for classification of workers into categories.

It was suggested that a clearer idea of the activities of the inspection service would be obtained by asking for information as regards both the number of establishments visited and the number of visits made. This suggestion was accepted by the Conference, which also agreed to replace the word 'inspected' at the end of the paragraph by the word 'visited'.

Paragraph (d) as amended reads as follows:

- (d) number of establishments visited and of visits made (by day, by night) in each category of establishment, with an indication of the number of workers employed in the establishments visited and the number of establishments visited more than once during the year.

The full text approved by the Conference for this point is accordingly as follows:

Necessity of providing that the annual reports should deal, *inter alia*, with the following points:

- (a) number of inspectors, classified by grade and duties (with special mention of women inspectors), geographical distribution of inspection services,
- (b) enumeration of the Acts and Regulations subject to supervision by the inspection service, with special mention of Acts

- and Regulations which have come into force during the period covered by the report ,
- (c) as far as statistics are available, number of establishments subject to inspection, classified by main branches of production and principal groups of occupations, with an indication of the number of workers employed (men, women, young persons and children) ,
  - (d) number of establishments visited and of visits made (by day, by night) in each category of establishment, with an indication of the number of workers employed in the establishments visited and the number of establishments visited more than once during the year ,
  - (e) number and nature of the infringements of the laws and regulations noted, number of infringements reported to the competent authorities, and number and nature of the penalties inflicted by the competent authorities ,
  - (f) statistics of industrial accidents and occupational diseases , number, nature and cause, by categories of establishments, of accidents and cases of occupational diseases notified

*Geneva— 2 June 1939*

(Signed) VERVAECK (*Chairman*)

APPENDIX  
COMPOSITION OF THE CONFERENCE

REPRESENTATIVES OF THE GOVERNING BODY

*Government group* MR LI PING HENG, MR HELIO LOBO.

*Employers' group* MR H C OERSTED, MR CH TZAUT

*Workers' group* MR CH SCHÜRCH, MR O HINDAHL

REPRESENTATIVES OF THE STATES

*Afghanistan*

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Mr Marko MLADINEO, Engineer, Labour Inspector,

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Mr PERRIN (France),	Mr VISKE (Hungary),

and the Chairman (Mr VERVAECK)



# CONSULTATION OF GOVERNMENTS

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## INTRODUCTION

*As a result of its study of the organisation of labour inspection in the various countries, the Office reached certain conclusions as to the points that might suitably be covered by international regulations. These conclusions and the list of points drawn up in consequence are reproduced on pages 273 to 357 of the present volume. They were submitted to the Preparatory Technical Conference on the Organisation of Labour Inspection in Industrial and Commercial Undertakings, which adopted the report reproduced on pages 359 to 389.*

*The questionnaire reproduced in the following pages has been drawn up by the Office in the light of its own preliminary study of the situation in the various countries and of the advice given by the Preparatory Technical Conference. It appears unnecessary in the present introduction to give detailed explanations of the reasons for which the various questions have been drafted, seeing that these explanations are fully supplied in Chapter I, Part II, entitled "Conclusions" and in the report of the Preparatory Technical Conference. Governments are accordingly requested to consider the questionnaire in the light of these two parts of the present volume.*

*Article 6, paragraph 5, of the Standing Orders of the Conference lays down rules for the consultation of Governments by means of a questionnaire, and prescribes in particular that the questionnaire "shall request Governments to give reasons for their replies". This latter provision was only recently introduced into the Standing Orders. Experience in the past had shown that Governments frequently replied to questions by a simple affirmative or negative, that in such cases it was difficult to appreciate the grounds on which the Governments' positive or negative attitude was based, and that thus the Office was deprived of information which would be of great assistance to it in preparing draft texts*



*for submission to the Conference, while the delegates at the Conference found themselves called upon to take decisions without being in possession of all the data which might enable them to ensure that their decisions were, under the circumstances, the most appropriate ones. Governments are therefore particularly requested to bear this new stipulation in mind in drafting their replies and to indicate, at least in a summary form, the grounds on which the reply to each question is based.*

*QUESTIONNAIRE***I. — DESIRABILITY OF INTERNATIONAL REGULATIONS  
AND THEIR FORM**

1. Do you consider that it would be desirable to adopt international regulations on the organisation of labour inspection in industrial and commercial undertakings, in the form of one or more Draft Conventions and one or more Recommendations ?

2. If your reply to question 1 is in the affirmative, do you consider that the Conference should adopt :

(a) a single Draft Convention covering both industry and commerce ? or

(b) two separate Draft Conventions for industry and commerce respectively ? or

(c) a Draft Convention for industry and a Recommendation for commerce ?

3. (a) Do you consider that the Conference should, in addition, adopt a Recommendation on particular points ?

(b) If so, do you agree that the points to be dealt with by means of a Recommendation should be the points covered by questions 23-25, 29, 30, 40-45, 48, 49, 62 ?

**II. — SCOPE OF THE INTERNATIONAL REGULATIONS**

4. Do you consider that the proposed international regulations should be applicable only to such industrial and commercial undertakings as are, under the national law, covered by a system of labour inspection ?

**III. — OBJECT OF LABOUR INSPECTION**

5. (a) Do you consider that it should be specified that the object of labour inspection, for the purposes of the proposed international regulations, is to secure the enforcement of legally binding provisions relating to the conditions of work and the protection of the workers while engaged in their work ?

*(b)* If you do not consider the above definition of the object of labour inspection satisfactory, what other definition would you propose ?

6. *(a)* Do you consider it desirable to insert in the text of the international regulations a purely illustrative list of subjects appropriately covered by the term "conditions of work and protection of the workers while engaged in their work" ?

*(b)* If so, do you consider that the following subjects should be included in such an illustrative list :

- (i) hours of work and rest ?
- (ii) weekly rest days, public holidays and other holidays ?
- (iii) night work ?
- (iv) prohibition of the employment of certain persons on dangerous, unhealthy or physically unsuitable work ?
- (v) protection of women and juvenile workers ?
- (vi) health and safety ?
- (vii) protection of wages ?
- (viii) regulation of wage rates ?
- (ix) workers' rights in case of dismissal ?

*(c)* Do you propose that any other subjects should be included in such an illustrative list ? If so, which ?

#### IV. — ORGANISATION OF INSPECTION SERVICES

7. *(a)* Do you consider that the international regulations should lay down that each inspection service should be placed under the direct and exclusive control of a central authority (it being understood that in a federal country the term "central authority" may be interpreted as meaning either the federal authority or the authority of any of the federated units) ?

*(b)* Do you consider that the international regulations should allow for exceptions to this general principle ?

*(c)* If so, what exceptions would you propose ?

8. Do you consider that the international regulations should require the association in the work of inspection, for

the purposes of enforcing the provisions concerning health and safety, and according to the methods deemed most desirable or appropriate by the national authorities, of duly qualified technical experts and specialists in

- (a) medicine ?
- (b) engineering ?
- (c) electricity ? and
- (d) chemistry ?

9. Do you consider that, with a view to preventing overlapping and ensuring uniformity in the activities of all the bodies concerned, the international regulations should provide that Members should take appropriate measures to regulate the co-operation of the inspection services with other Government services, or with public or private institutions engaging in similar inspection work ?

10. Do you consider that the international regulations should lay down that labour inspectors should not be required to meet out of their own pockets any travelling expenses necessitated by their duties ?

11. Do you consider that the international regulations should lay down that each local inspection service should be provided with an office fitted up in accordance with the requirements of the service and open to those concerned at all reasonable hours ?

## V. — INSPECTING STAFF

12. Do you consider that the international regulations should provide that the labour inspectors should be recruited solely in the light of their qualifications for the tasks to be entrusted to them ?

13. If so, do you consider that it should be laid down that the means of ascertaining these qualifications shall be determined by the national regulations ?

14. Do you consider that it should be laid down in the international regulations that the labour inspectors should be given all the requisite guarantees for preserving their independence and impartiality as against any external influences ?

**15. If so, do you consider that it should be further specified that such guarantees should be provided**

- (a)* preferably, by giving labour inspectors the benefit of civil service regulations ; or
- (b)* in countries where labour inspectors do not enjoy the benefit of civil service regulations, by laying down that an inspector, after establishment in the service, may not be dismissed except on one of certain specified grounds ?

**16. If your answer to question 15 is in the affirmative, do you consider that the grounds for dismissal might be specified as follows :**

- (a)* age limit ?
- (b)* expiry of contract of engagement ?
- (c)* duly proved incompetence ?
- (d)* grave dereliction of duty ?
- (e)* conduct incompatible with the inspector's duties ?
- (f)* invalidity ?
- (g)* suppression of post in consequence of reorganisation of the service ? or
- (h)* reduction in the number of posts ?

Please state, in particular, which, if any, of these grounds you would propose to delete and what grounds, if any, you would propose to add.

**17. Do you consider that the international regulations should lay down that the inspection staff must include women inspectors ?**

## **VI. — POWERS OF INSPECTORS**

### **A — SUPERVISORY POWERS**

**18. Do you consider that the international regulations should lay down that labour inspectors provided with proper credentials should, by a specific provision of the national law, be given the right :**

- (a)* freely to enter establishments and workplaces ? and
- (b)* freely to inspect establishments and workplaces ?

*Right of Free Entry into Establishments and Workplaces*

19. Do you consider that the inspectors' right of free entry into establishments and workplaces should include :

- (a) right (of labour inspectors) to enter freely and without previous notice at any hour of the day or night any establishments or workplaces liable to inspection where they have reasonable grounds to presume that persons enjoying legal protection are working ? and
- (b) right (of labour inspectors) to enter by day any establishments or workplaces which they have reasonable ground to presume to be liable to inspection ?

20. Do you consider that the right of free entry in the sense of question 19 is compatible with a possible obligation for the inspector to inform the employer or the employer's representative of his presence in the establishment or workplace ?

21. If so, do you consider that the international regulations should lay down that the inspector should not be obliged to inform the employer or the employer's representative of his presence in any case where he considers that such notification may be prejudicial to the proper performance of his inspection duties ?

*Right freely to Inspect Establishments and Workplaces*

22. Do you consider that the right freely to inspect establishments and workplaces should include, in particular, the following powers :

- (a) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the relevant legislation ?
- (b) to require the production of any books, registers or other documents, the keeping of which is prescribed by the laws relating to conditions of work, to see that they are in conformity with the statutory provisions, to copy them or to make extracts from them ?
- (c) to enforce the posting of statutory notices ?

- (d) to take or remove for purposes of analysis samples of materials and substances used or handled in the undertaking ?
- (e) in general, to carry out any examination, test or enquiry that the inspector may consider necessary in order to satisfy himself that the provisions of labour legislation are being strictly observed ?

B — PREVENTIVE DUTIES OF LABOUR INSPECTION SERVICES  
IN RESPECT OF HEALTH AND SAFETY

*Permits for New Plant, etc*

23. Do you consider that it should be laid down in a Recommendation that, in principle, the labour inspection services should share in the work of checking in advance the plans for new establishments, new plant and the employment of new processes of production ?

24. If so, do you consider that provision should be made in a Recommendation for

- (a) (subject to the right of appeal provided in national legislation) making it compulsory for plans for new establishments, new plant and the utilisation of new processes of production to be submitted to the labour inspection service for approval, and making the execution of such plans conditional upon the carrying out of the alterations ordered by the labour inspection service so as to secure the health and safety of the workers ? or
- (b) making it compulsory for all plans for new establishments, new plant and the utilisation of new processes of production to be submitted to the labour inspection service for its opinion as to whether the plans are in conformity with the laws and regulations concerning industrial health and safety ?

25. Do you consider that it should be laid down in a Recommendation that in any case the parties concerned should be required to submit to the labour inspection service the plans for new establishments, new plant and the utilisation of new processes of production respectively deemed under the national laws and regulations to be dangerous or unhealthy ?

*Powers of Regulation after Undertakings have begun Work*

26. Do you consider that the international regulations should lay down that inspection services should have the power, for preventive purposes, to take steps for remedying defects observed in the plant, lay-out, or working methods of undertakings ?

27. If so, do you consider that such power should include the two following mutually complementary rights :

- (a) the right to make orders or have orders made—subject to the right of appeal to a judicial or administrative authority provided by national legislation — requiring such alterations to the installation or plant as may be necessary for securing full and exact compliance with the laws and regulations relating to the health and safety of the workers, to be carried out within a time limit fixed by the inspection service ?
- (b) the right to take, or cause to be taken, measures with immediate executory force in the event of imminent danger to the health and safety of the workers ?

28. Do you consider that the international regulations should further provide that, where the procedure defined in question 27 would not be in accordance with the administrative or judicial system of the country, the inspection service should be empowered and required to apply to the competent authorities for the issue of orders, or for the taking of measures, with immediate executory force ?

**VII. — OBLIGATIONS OF EMPLOYERS  
AND WORKERS**

29. Do you consider that it should be laid down in a Recommendation that the labour inspection service should be given notice in advance of the opening of any industrial or commercial establishment and of extensive alterations to such establishments ?

30. If so, do you consider that the obligation to give such notice to the labour inspection service should be imposed

- (a) upon any person who proposes to open an industrial or commercial establishment ?



- (b) upon any person who proposes to make extensive alterations to such an establishment ? and
- (c) upon any person who proposes to take over such an establishment ?

31. Do you consider that the international regulations should lay down that the requisite measures must be taken to ensure that the labour inspection service is notified of industrial accidents and cases of industrial diseases in such a manner as may be determined by national law ?

#### VIII. — PENALTIES FOR OBSTRUCTING INSPECTORS

32. Do you consider that the international regulations should lay down that adequate penalties shall be prescribed by national law for obstructing labour inspectors in the performance of their duties ?

#### IX. — ENFORCEMENT PROCEEDINGS

33. Do you consider that the international regulations should require acceptance of the principle that, in the event of deliberate violation of or serious negligence in observing the law, the employer or his representatives shall be proceeded against without previous warning from the inspector, except in special cases where the law provides that notice shall be given in the first instance to the employer to carry out certain measures ?

34. If so, do you consider it desirable to specify that this principle should not be interpreted as tending to deprive inspectors of any discretionary power normally allowed them of giving warning before taking proceedings in cases of contraventions of relatively slight importance ?

35. Do you consider that the international regulations should lay down that adequate penalties shall be prescribed by national law for breaches of the legal provisions which the inspectors have to enforce ?

## **X. — OBLIGATIONS OF LABOUR INSPECTORS**

### **A — INCOMPATIBILITY**

36. Do you consider that the international regulations should lay down that labour inspectors should have no direct or indirect interest in the undertakings under their supervision ?

### **B — PROFESSIONAL SECRECY**

37. Do you consider that the international regulations should lay down that labour inspectors should be bound, on pain of legal penalties or suitable disciplinary measures, not to disclose, even after leaving the service, any manufacturing or commercial secrets or working processes in general which may come to their knowledge in the course of their duties, except in cases, specified by national legislation, where the exigencies of the service so require ?

38. Do you consider that the international regulations should lay down that any complaint submitted to an inspector to bring to his notice a defect or breach of the law must be treated by him as absolutely confidential ?

39. Do you consider that it should be laid down in addition that no intimation should be given by the inspector to the employer, or his representatives, that it is in consequence of the receipt of a complaint that a visit of inspection is being made ?

## **XI. — CO-OPERATION OF EMPLOYERS AND WORKERS WITH THE LABOUR INSPECTION SERVICE**

40. Do you consider that provision should be made in a Recommendation for the maintenance by the labour inspection services of active collaboration with the employers and workers concerned, and more particularly with their occupational organisations ?

41. Do you consider that provision should be made in a Recommendation for the organisation of conferences, joint committees, and other bodies, in which delegates of the labour inspection services might discuss with representatives of the

occupational organisations of employers and workers questions concerning the enforcement of labour legislation, and the health and safety of the workers ?

42. Do you consider that the question of the institution in the undertakings of safety delegates and safety committees should be dealt with in a Recommendation ?

43. If so, do you consider that the Recommendation should contain a provision to the effect that staff delegates in establishments or workplaces subject to inspection should be enabled to collaborate with the employers, either directly or on safety committees, with a view to improving conditions of health and safety in the establishments or workplaces ?

44. Do you further consider that it should be laid down in a Recommendation that staff delegates be authorised to get into touch with the officials of the inspection service when the latter are carrying out investigations in establishments or workplaces and, in particular, enquiries into industrial accidents or occupational diseases ?

## **XII. — METHODS AND STANDARDS OF INSPECTION**

### **A — GENERAL METHODS OF INSPECTION**

45. Do you consider that provision should be made in a Recommendation for the adoption of a system of inspection which, while ensuring the prompt imposition of penalties for deliberate, repeated or concerted offences against labour legislation and serious cases of negligence in the application of legal provisions, would, in the case of less serious offences, allow the inspector to exercise his discretion in deciding whether to issue a warning before initiating penal proceedings ?

### **B — EFFICIENCY OF INSPECTION**

46. Do you consider that, with a view to permitting the inspection services to perform their work efficiently, the international regulations should lay down that the number of inspectors shall be determined with due regard for :

(a) the importance of the duties to be performed, and in particular :

- (1) the number, nature, size and situation of the establishments and workplaces liable to inspection ?
  - (ii) the number and variety of the workers employed in such establishments and workplaces ? and
  - (iii) the extent of the tasks entrusted to the inspection service, from the point of view of the number and the complexity of the legal provisions which it has to enforce ?
- (b) the extent of the material means placed at the disposal of the inspectors (telephone, means of transport, clerical assistance, office accommodation, etc.) ?
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective (visits to be of reasonable duration — choice of the most appropriate moment for visits — necessity of carrying out visits unexpectedly, etc.) ?

47. As a means of guaranteeing efficiency of inspection, do you consider that the international regulations should lay down that inspectors should be adequately instructed in the performance of their duties ?

48. Do you consider that provision should be made in a Recommendation for the necessary steps being taken to ensure that employers and workers are given instruction as far as possible in labour legislation and questions of industrial hygiene and safety, more particularly by means of

- (a) lectures ?
- (b) wireless talks ?
- (c) health and safety exhibitions ?
- (d) the distribution of explanatory pamphlets containing practical summaries of the legislative provisions ?
- (e) the inclusion of instruction in industrial hygiene and safety in the curriculum of technical schools ?

49. Do you consider that any other appropriate means of instruction should be specifically mentioned ? If so, which do you propose ?

## C. — FREQUENCY OF VISITS

50. Do you consider that the international regulations should lay down a minimum degree (uniform or variable) of frequency of inspection as regards the establishments and workplaces liable to inspections ?

51. (a) Do you consider that a special minimum degree of frequency of inspection should be laid down for establishments and workplaces in which dangerous machines are in use or in which dangerous or unhealthy working processes are carried on ?

(b) If so, do you consider that the international regulations should lay down that such establishments and workplaces should be inspected at least once a year, and more often if necessary ?

52. (a) Do you consider that as regards establishments and workplaces other than those mentioned in question 51 the minimum degree of frequency of inspection should be fixed by reference to the number of workers employed in the establishments and workplaces concerned ?

(b) If so, do you consider that the international regulations should lay down :

- (i) that as far as possible all industrial establishments and workplaces where more than five persons are employed should be inspected at least once a year ?
- (ii) that as far as possible all commercial establishments where more than ten persons are employed should be inspected at least once a year ?
- (iii) that all other establishments and workplaces should be inspected at least once every two years ?

(c) If the minimum figures mentioned above (five workers for industrial establishments and workplaces, and ten workers for commercial establishments) do not meet with your approval, what other minimum figures would you suggest ?

53. If you consider that the provisions mentioned in questions 51 and 52 would be too rigid, do you consider that the international regulations should provide :

- (a) that all establishments and workplaces in which dangerous machines are in use, or in which dangerous or unhealthy working processes are carried on, should be inspected at least once a year, and more often if necessary ?
- (b) that other establishments and workplaces should be inspected as often as necessary in order to ensure the effective enforcement of labour legislation ?

### **XIII. — REPORTS OF THE LABOUR INSPECTION SERVICE**

#### **A — INSPECTORS' PERIODICAL REPORTS**

54. Do you consider that the international regulations should provide that labour inspectors or local inspection services should be required to submit to the central inspection authority periodical general reports on the results of their work in supervising the enforcement of labour legislation ?

55. If so, do you consider that it should be laid down that such reports should be

- (a) drawn up in a prescribed form, and
- (b) submitted at as frequent intervals as possible, and at least once a year ?

#### **B — PUBLICATION OF ANNUAL REPORTS BY THE CENTRAL AUTHORITY**

56. Do you consider that the international regulations should lay down that the central inspection authority should publish an annual general report on the work of the inspection services under its control ?

57. If so, do you consider that it should be laid down that such annual reports should be published within a reasonable time, and in any case within 12 months of the end of the year to which they refer ?

58. Do you consider that the international regulations should lay down that the annual reports published by the central inspection authority should be transmitted to the International Labour Office ?

**59. If so, do you consider that the international regulations should require such annual reports to be transmitted to the International Labour Office**

- (a) within a reasonable period after their publication ? or
- (b) within a period to be specified in the international regulations ?

**If you prefer the second solution, what period would you propose ?**

**C — CONTENTS OF THE ANNUAL REPORTS PUBLISHED BY THE  
CENTRAL AUTHORITY**

**60. Do you consider that the international regulations should specify the essential subjects to be covered in the annual reports published by the central inspection authority ?**

**61. If so, do you consider that it should be laid down in the Draft Convention or Conventions that the annual reports should in particular cover the following subjects :**

- (a) Acts and regulations relevant to the work of the inspection service ?
- (b) Staff of the labour inspection service ?
- (c) Statistics of establishments or workplaces liable to inspection and of the number of workers therein employed ?
- (d) Statistics of inspection visits ?
- (e) Statistics of contraventions and penalties ?
- (f) Statistics of industrial accidents ?
- (g) Statistics of occupational diseases ?

**62. Do you consider that it should be further laid down in a Recommendation that the annual reports should supply the following detailed information, under the headings mentioned in question 61 :**

- (a) *Acts and regulations relevant to the work of the inspection service*

**Enumeration of the Acts and Regulations relevant to the work of the inspection service, on the understanding that the**

successive annual reports need only mention Acts and Regulations which have come into force during the period covered by each report ?

(b) *Staff of the labour inspection service*

- (i) Aggregate number of inspectors ?
- (ii) Classification of inspectors by grade and duties ?
- (iii) Number of women inspectors ?
- (iv) Geographical distribution of inspection services ?

(c) *Statistics of establishments or workplaces liable to inspection and of the number of workers therein employed (in so far as existing statistics make it possible to supply the information indicated under the following headings)*

- (i) Number of establishments or workplaces liable to inspection ?
- (ii) Classification of such establishments or workplaces by branches of economic activity (e.g. building, textile industry, chemical industry, etc.) ?
- (iii) Average number of workers employed in such establishments or workplaces during the year ?
- (iv) Classification of such workers by branches of economic activity (e.g. building, textile industry, chemical industry, etc.) ?
- (v) Classification of workers employed under the following headings : men, women, young persons, and children ?

(d) *Statistics of inspection visits*

- (i) Number of establishments or workplaces visited ?
- (ii) Classification of establishments or workplaces visited by branches of economic activity (e.g. building, textile industry, chemical industry, etc.) ?
- (iii) Number of visits made ?
- (iv) Classification of visits made according to whether they were made :
  - by day ;
  - by night ?
- (v) Number of workers employed in the establishments and workplaces visited ?
- (vi) Number of establishments or workplaces visited more than once during the year ?



(e) *Statistics of contraventions and penalties*

- (i) Number of the infringements of the legal provisions noted ?
- (ii) Classification of such infringements according to the legal provisions to which they relate ?
- (iii) Number of infringements reported to the competent authorities ?
- (iv) Number of convictions ?
- (v) Nature of the penalties inflicted by the competent authorities in the various cases (fines, imprisonment, etc.) ?

(f) *Statistics of industrial accidents*

- (i) Number of industrial accidents notified ?
- (ii) Classification of such accidents by branches of economic activity (e.g. building, textile industry, chemical industry, etc.) ?
- (iii) Classification of such accidents according to their cause ?
- (iv) Classification of such accidents according to their severity (fatal and non-fatal, total incapacity and partial incapacity) ?
- (v) Classification of such accidents according to the duration of incapacity ?

(g) *Statistics of occupational diseases*

- (i) Number of cases of occupational diseases notified ?
  - (ii) Classification of such cases according to occupation ?
  - (iii) Classification of such cases according to their cause or character (nature of disease, nature of poisonous substance, unhealthy process, etc., to which the disease is due) ?
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## APPENDIX

### **Recommendation concerning the general principles for the organisation of systems of inspection to secure the enforcement of the laws and regulations for the protection of the workers, adopted by the Fifth (1923) Session of the International Labour Conference.**

The General Conference of the International Labour Organisation of the League of Nations,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifth Session on 22 October 1923, and

Having decided upon the adoption of certain proposals with regard to the general principles for the organisation of factory inspection, the question forming the agenda of the Session, and

Having determined that these proposals should take the form of a recommendation,

adopts, this twenty-ninth day of October of the year one thousand nine hundred and twenty-three, the following Recommendation, to be submitted to the Members of the International Labour Organisation for consideration with a view to effect being given to it by national legislation or otherwise, in accordance with the provisions of Part XIII of the Treaty of Versailles and of the corresponding Parts of the other Treaties of Peace

Whereas the Treaty of Versailles and the other Treaties of Peace include among the methods and principles of special and urgent importance for the physical, moral and intellectual welfare of the workers the principle that each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the workers,

Whereas the resolutions adopted at the First Session of the International Labour Conference concerning certain countries where special conditions prevail involve the creation by these countries of an inspection system if they do not already possess such a system,

Whereas the necessity of organising a system of inspection becomes specially urgent when Conventions adopted at Sessions of the Conference are being ratified by Members of the Organisation and put into force,

Whereas while the institution of an inspection system is undoubtedly to be recommended as one of the most effective means of ensuring the enforcement of Conventions and other engagements for the regulation of labour conditions, each Member is solely responsible for the execution of Conventions to which it is a party in the territory under its sovereignty or its authority and must accordingly itself determine in accordance with local conditions what measures of supervision may enable it to assume such a responsibility,

Whereas, in order to put the experience already gained at the disposal of the Members with a view to assisting them in the institution or reorganisation of their inspection system, it is desirable to indicate the general principles which practice shows to be the best calculated to ensure uniform, thorough and effective enforcement of Conventions and more generally of all measures for the protection of the workers, and

Having decided to leave to each country the determination of how far these general principles should be applied to certain spheres of activity,

And taking as a guide the long experience already acquired in factory inspection,

The General Conference recommends that each Member of the International Labour Organisation should take the following principles and rules into consideration

## I SPHERE OF INSPECTION

1 That it should be the principal function of the system of inspection which should be instituted by each Member in accordance with the ninth principle of Article 427 of the Treaty of Versailles to secure the enforcement of the laws and regulations relating to the conditions of work and the protection of the workers while engaged in their work (hours of work and rest, night work, prohibition of the employment of certain persons on dangerous, unhealthy or physically unsuitable work, health and safety, etc)

2 That, in so far as it may be considered possible and desirable, either for reasons of convenience in the matter of supervision or by reason of the experience which they gain in carrying out their principal duties, to assign to inspectors additional duties which may vary according to the conceptions, traditions and customs prevailing in the different countries, such duties may be assigned, provided.

(a) that they do not in any way interfere with the inspectors' principal duties,

(b) that in themselves they are closely related to the primary object of ensuring the protection of the health and safety of the workers,

(c) that they shall not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers

## II NATURE OF THE FUNCTIONS AND POWERS OF INSPECTORS

### A General

3 That inspectors provided with credentials should be empowered by law:

(a) to visit and inspect, at any hour of the day or night, places where they may have reasonable cause to believe that persons under the protection of the law are employed, and to enter by day any place which they may have reasonable cause to believe to be an establishment, or part thereof, subject to their supervision, provided that, before leaving, inspectors should, if possible, notify the employer or some representative of the employer of their visit,

(b) to question, without witnesses, the staff belonging to the establishment, and, for the purpose of carrying out their duties, to apply for information to any other persons whose evidence they may consider necessary, and to require to be shown any registers or documents which the laws regulating conditions of work require to be kept.

4 That inspectors should be bound by oath, or by any method which conforms with the administrative practice or customs in each country, not to disclose, on pain of legal penalties or suitable disciplinary measures, manufacturing secrets, and working processes in general, which may come to their knowledge in the course of their duties

5 That, regard being had to the administrative and judicial systems of each country, and subject to such reference to superior authority as may be considered necessary, inspectors should be empowered to bring breaches of the laws, which they ascertain, directly before the competent judicial authorities.

That in countries where it is not incompatible with their system and principles of law, the reports, drawn up by the inspectors shall be considered to establish the facts stated therein in default of proof to the contrary

6 That the inspectors should be empowered in cases where immediate action is necessary to bring installation or plant into conformity with laws and regulations, to make an order (or, if that procedure should not be in accordance with the administrative or judicial systems of the country, to apply to the competent authorities for an order) requiring such alterations to the installation or plant to be carried out within a fixed time as may be necessary for securing full and exact observance of the laws and regulations relating to the health and safety of the workers,

That in countries where the inspector's order has executive force of itself, its execution should be suspended only by appeal to a higher administrative or judicial authority, but in no circumstances should provisions intended to protect employers against arbitrary action prejudice the taking of measures with a view to the prevention of imminent danger which has been duly shown to exist.

## B *Safety*

7. Having regard to the fact that, while it is essential that the inspectorate should be invested with all the legal powers necessary for the performance of its duties, it is equally important, in order that inspection may progressively become more effective, that, in accordance with the tendency manifested in the oldest and most experienced countries, inspection should be increasingly directed towards securing the adoption of the most suitable safety methods for preventing accidents and diseases with a view to rendering work less dangerous, more healthy, and even less exhausting, by the intelligent understanding, education, and co-operation of all concerned, it would appear that the following methods are calculated to promote this development in all countries:

(a) that all accidents should be notified to the competent authorities, and that one of the essential duties of the inspectors should be to investigate accidents, and more especially those of a serious or recurring character, with a view to ascertaining by what measures they can be prevented;

(b) that inspectors should inform and advise employers respecting the best standards of health and safety ,

(c) that inspectors should encourage the collaboration of employers, managing staff and workers for the promotion of personal caution, safety methods, and the perfecting of safety equipment ,

(d) that inspectors should endeavour to promote the improvement and perfecting of measures of health and safety, by the systematic study of technical methods for the internal equipment of undertakings, by special investigations into problems of health and safety, and by any other means ,

(e) that in countries where it is considered preferable to have a special organisation for accident insurance and prevention completely independent of the inspectorate, the special officers of such organisations should be guided by the foregoing principles

### III ORGANISATION OF INSPECTION

#### A *Organisation of the Staff*

8 That, in order that the inspectors may be as closely as possible in touch with the establishments which they inspect and with the employers and workers, and in order that as much as possible of the inspectors' time may be devoted to the actual visiting of establishments, they should be localised, when the circumstances of the country permit, in the industrial districts

9 That, in countries which for the purposes of inspection are divided into districts, in order to secure uniformity in the application of the law as between district and district and to promote a high standard of efficiency of inspection, the inspectors in the districts should be placed under the general supervision of an inspector of high qualifications and experience. Where the importance of the industries of the country is such as to require the appointment of more than one supervising inspector, the supervising inspectors should meet from time to time to confer on questions arising in the divisions under their control in connection with the application of the law and the improvement of industrial conditions

10 That the inspectorate should be placed under the direct and exclusive control of a State authority and should not be under the control of, or in any way responsible to, any local authority in connection with the execution of any of their duties

11 That, in view of the difficult scientific and technical questions which arise under the conditions of modern industry in connection with processes involving the use of dangerous materials, the removal of injurious dust and gases, the use of electrical plant and other matters, it is essential that experts having competent medical, engineering, electrical or other scientific training and experience should be employed by the State for dealing with such problems

12 That, in conformity with the principle contained in Article 427 of the Treaty of Peace, the inspectorate should include women as well as men inspectors ; that, while it is evident that with regard to certain matters and certain classes of work inspection can be

more suitably carried out by men as in the case of other matters and other classes of work inspection can be more suitably carried out by women, the women inspectors should in general have the same powers and duties and exercise the same authority as the men inspectors, subject to their having had the necessary training and experience, and should have equal opportunity of promotion to the higher ranks

### *B Qualifications and Training of Inspectors*

13 That, in view of the complexity of modern industrial processes and machinery, of the character of the executive and administrative functions entrusted to the inspectors in connection with the application of the law and of the importance of their relations to employers and workers and employers and workers' organisations and to the judicial and local authorities, it is essential that the inspectors should in general possess a high standard of technical training and experience, should be persons of good general education, and by their character and abilities be capable of acquiring the confidence of all parties

14 That the inspectorate should be on a permanent basis and should be independent of changes of Government, that the inspectors should be given such a status and standard of remuneration as to secure their freedom from any improper external influences and that they should be prohibited from having any interest in any establishment which is placed under their inspection

15 That inspectors on appointment should undergo a period of probation for the purpose of testing their qualifications and training them in their duties, and that their appointment should only be confirmed at the end of that period if they have shown themselves fully qualified for the duties of an inspector

16 That, where countries are divided for the purposes of inspection into districts, and especially where the industries of the country are of a varied character, it is desirable that inspectors, more particularly during the early years of their service, should be transferred from district to district at appropriate intervals in order to obtain a full experience of the work of inspection

### *C Standard and Methods of Inspection*

17 That, as under a system of State inspection the visits of the inspectors to any individual establishment must necessarily be more or less infrequent, it is essential—

(a) That the principle should be laid down and maintained that the employer and the officials of the establishment are responsible for the observance of the law, and are liable to be proceeded against in the event of deliberate violation of, or serious negligence in observing, the law, without previous warning from the inspector;

It is understood that the foregoing principle does not apply in special cases where the law provides that notice shall be given in the first instance to the employer to carry out certain measures.

(b) That, as a general rule, the visits of the inspectors should be made without any previous notice to the employer.

It is desirable that adequate measures should be taken by the State to ensure that employers, officials and workers are acquainted with the provisions of the law and the measures to be taken for the protection of the health and safety of the workers, as, for example, by requiring the employer to post in his establishment an abstract of the requirements of the law

18 That, while it is recognised that very wide differences exist between the size and importance of one establishment and another, and that there may be special difficulties in countries or areas of a rural character where factories are widely scattered, it is desirable that, as far as possible, every establishment should be visited by an inspector for the purposes of general inspection not less frequently than once a year, in addition to any special visits that may be made for the purpose of investigating a particular complaint or for other purposes, and that large establishments and establishments of which the management is unsatisfactory from the point of view of the protection of the health and safety of the workers, and establishments in which dangerous or unhealthy processes are carried on, should be visited much more frequently. It is desirable that, when any serious irregularity has been discovered in an establishment, it should be revisited by the inspector at an early date with a view to ascertaining whether the irregularity has been remedied

#### D *Co-operation of Employers and Workers*

19 That it is essential that the workers and their representatives should be afforded every facility for communicating freely with the inspectors as to any defect or breach of the law in the establishment in which they are employed, that every such complaint should as far as possible be investigated promptly by the inspector, that the complaint should be treated as absolutely confidential by the inspector and that no intimation even should be given to the employer or his officials that the visit made for the purpose of investigation is being made in consequence of the receipt of a complaint

20 That, with a view to securing full co-operation of the employers and workers and their respective organisations in promoting a high standard in regard to the conditions affecting the health and safety of the workers, it is desirable that the inspectorate should confer from time to time with the representatives of the employers' and workers' organisations as to the best measures to be taken for this purpose

#### IV INSPECTORS' REPORTS

21 That inspectors should regularly submit to their central authority reports framed on uniform lines dealing with their work and its results, and that the said authority should publish an annual report as soon as possible and in any case within one year after the end of the year to which it relates, containing a general survey of the information furnished by the inspectors, that the calendar year should be uniformly adopted for these reports.

22 That the annual general report should contain a list of the laws and regulations relating to conditions of work made during the year which it covers

23 That this annual report should also give the statistical tables necessary in order to provide all information on the organisation and work of the inspectorate and on the result obtained. The information supplied should as far as possible state

(a) The strength and organisation of the staff of the inspectorate,

(b) The number establishments covered by the laws and regulations, classified by industries and indicating the number of workers employed (men, women, young persons, children).

(c) The number of visits of inspection made for each class of establishment with an indication of the number of workers employed in the establishments inspected (the number of workers being taken to be the number employed at the time of the first visit of the year), and the number of establishments inspected more than once during the year,

(d) The number and nature of breaches of the laws and regulations brought before the competent authorities and the number and nature of the convictions by the competent authority,

(e) The number, nature and the cause of accidents and occupational diseases notified, tabulated according to class of establishment



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